Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

KATHERINE GRIFFIS,

Petitioner,

v.

MARIANNE LUBAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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141 pp

QUESTIONS PRESENTED

Whether the Calder v. Jones "effects test", established by this Court for evaluating personal jurisdiction over non-resident authors of allegedly defamatory works, should be read to require higher Due Process requirements for personal jurisdiction over authors whose work appears on the Internet, rather than print or electronic media, by considering acts of third persons to establish personal jurisdiction over author-defendants, a factor which Chief Justice Rehnquist specifically rejected in Calder v. Jones, 465 U.S. 783 (1984)?

PARTIES TO THE PROCEEDING

The petitioner in this case is Ms. Katherine Griffis, a professional consultant and scholar specializing in the study of ancient Egypt [Egyptology] who lives and works in Alabama. Respondent in this case is Ms. Marianne Luban, a Minnesota-based scholar with a professional interest in Egyptology, who is the subject of an Alabama defamation judgment and injunction, entered in favor of Ms. Griffis. Enforcement of the Alabama judgment in Minnesota is the underlying issue that gave rise to the personal jurisdiction issue.

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PETITION FOR A WRIT OF CERTIORARI

Katherine Griffis respectfully petitions for a writ of *certiorari* to review the judgment of the Minnesota Supreme Court which voids enforcement of a valid Alabama judgment, in violation of the Full Faith and Credit Clause of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court, whose judgment is herein sought to be reviewed, is reported at Griffis v. Luban, 646 N.W. 2d 527 (Minn. 2002), (rehrg. den. Aug. 14, 2002) and is included at Petitioner's Appendix p. 71 [*hereinafter*, Pet. App. 71]. The Minnesota Court of Appeals decision, which was reversed by the Minnesota Supreme Court, is reported at Griffis v. Luban, 633 N.W. 2d 548 (Minn.App. 2001) and is included at Pet. App. 61. The opinion of the referee and the district court, which had been upheld by the Court of Appeals, are respectively included at Pet. App. 44 and 51.

JURISDICTION

The Supreme Court of Minnesota denied Griffis' Petition for Rehearing on August 14, 2002. [*See*, Pet. App. 101]. The original jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1251, as well as discretionary review under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Due Process Clause, U. S. CONST., Amendment XIV.
Full Faith and Credit Clause, U.S. CONST. Art. IV, sec. 1.
Uniform Enforcement of Foreign Judgments Act, Minn. Stat. 548.26-.33 (1988).
Ala. R. Civ. P. 4.2(a)(2)(i).

STATEMENT OF THE CASE

This case involves a pure question of law and there are no disputed relevant facts. The Minnesota Supreme Court has refused to enforce a valid Alabama judgment against a Minnesota defendant, in contravention of the Full Faith and Credit Clause of the United States Constitution [U.S. CONST. Art. IV, sec. 1] and the Uniform Enforcement of Foreign Judgments Act [Minn. Stat. 548.26-.33 (1988)], based on a misreading of the "effects test" established by this Court in Calder v. Jones, 465 U.S. 783 (1984) to evaluate personal jurisdiction over authors of allegedly defamatory written work, which provides that:

> An individual injured in [her home forum, Alabama] need not go to [defendant's home forum, Minnesota] to seek redress from persons who, although remaining in [her home forum, Minnesota], knowingly cause injury in [plaintiff's home forum, Alabama]. Calder v. Jones, 465 U.S. at 788-790 (Rehnquist, J.). (insertions supplied for emphasis).

The Minnesota Supreme Court's opinion in this case rejects the foregoing reasoning of this Court.[1]

Introduction

The Minnesota Supreme Court has declared that Alabama's exercise of personal jurisdiction over a Minnesota Internet author, who intentionally defamed an Alabama resident, violated Due Process.

If the Minnesota Supreme Court's reasoning in this matter were applied to the facts in Calder, itself, the outcome of that case would have to be reversed. In effect, the

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[1] See, Petition for Rehearing which clearly sets out how the Minnesota Court's Opinion contravenes the settled precedent of this Court. [Pet. App. 85]

Supreme Court of Minnesota has not only rejected this Court's reasoning in Calder, it has created a new standard for determining the existence of personal jurisdiction over Internet authors. However, the Minnesota Supreme Court's application of the Calder "effects test", which requires a showing of **distribution and reading in the forum by third parties,**[2] was specifically rejected by this Court in a unanimous opinion written by Justice Rehnquist in Calder. *See*, 465 U.S. at 788-790. Chief Justice Rehnquist clearly explained how an author may be held amenable to suit in a foreign jurisdiction: **intentional creation** of an article, or other communication, that **defendant-author knew**, or should have known, would be **likely to harm** the plaintiff's reputation **"where plaintiff lives and works"**:

> Petitioner South **wrote** and petitioner Calder **edited** an article that they knew or should have known would have a potentially devastating impact upon respondent. And **they knew the brunt of the injury would be felt by respondent in the State in which she lives and works** and in which the *National Enquirer* has its largest circulation. Under the circumstances, **petitioners must "reasonably anticipate being haled into court there" to answer for the truth of the statements made in their article.** Worldwide Volkswagen Corp. v. Woodson, supra, at 297; Kulko v. California Superior Court, supra, at 97-98; Shaffer v. Heitner, *supra*, at 216. An individual **injured in California need not go to Florida to seek redress from persons who,** although remaining in Florida, **knowingly cause injury in California.** Calder v. Jones, 465 U.S. at 788-790 (Rehnquist, J.).(emphasis added).

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[2] Griffis v. Luban, 646 N.W. 2d 527, 535 (Minn. 2002) (rehrg.den. Aug. 14, 2002)

This Court specifically rejected "distribution in the forum" as a factor in determining personal jurisdiction over authors in other media, because authors rarely control distribution of their written work. Calder, 465 U.S. at 789. In the case at bar, the Minnesota Supreme Court struck down the exercise of personal jurisdiction by the courts of the sovereign State of Alabama by requiring that plaintiff demonstrate the author's work was distributed and "read" by third parties in the forum, thus violating its Full Faith and Credit obligations through a misapplication of this Court's holding in Calder.

In the trial court pleadings and affidavits Luban never denied she knew her statements would "cause injury in [Alabama]." The Minnesota trial court referee, district court judge, and the Court of Appeals all held the contents of the postings proved Luban knew or should have known that her attacks on Griffis' reputation would cause harm in Alabama. The Minnesota Supreme Court acknowledged that the record required that Luban had **actual knowledge** that Griffis lived and worked in Alabama. Griffis v. Luban, 646 N.W.2d 527, 535, fn.3 (2002).

Were the reading of the Calder "effects test", advanced by the Minnesota Supreme Court in this case, to find general application in Internet defamation actions nation-wide, even the most pointed attacks on a plaintiff's personal or professional reputation, disseminated worldwide on the Internet rather than print or electronic media, could be brought only in the **defendant's** home forum, in violation of the policy underlying Calder.

> An individual injured in [their home forum] need not go to [defendant's home forum] to seek redress from persons who, although remaining in [their home forum], knowingly cause injury in [plaintiff's home forum]. Calder, 465 U.S. at 788-790 (Rehnquist, J.).(insertion supplied).

The result would be a doctrine under which authors could shield themselves from suit in a foreign jurisdiction by simply electing to disseminate their defamatory attacks on the Internet, rather than in the *National Enquirer* or other print and broadcast media. The reading of Calder advanced by the Minnesota Supreme Court would allow Mr. South, the author-defendant in Calder, to post the identical story about Shirley Jones on the Internet and force Ms. Jones to come to HIS home forum to litigate her defamation claim.[3]

Procedural History

Beginning in 1997, a professional dispute arose between two serious students of ancient Egypt on the screen of an "Egyptology" newsgroup to which many professional and amateur archeologists, anthropologists and other interested parties contribute. Luban posted statements to that newsgroup which falsely accused Griffis of: running a fraudulent consulting business in Alabama; lying about her academic credentials from Alabama institutions; lying about the nature of her employment at the University of Alabama, Birmingham; and lying about her expertise in her chosen field, the study of ancient Egypt. Several of the postings reveal Luban had actual knowledge Griffis lived and worked in Alabama by **specifically** referring to: (1) Griffis' Alabama professional credentials; (2) Griffis' Alabama residence; (3) Griffis' employment in Alabama; and (4) Griffis' Alabama-based consulting business. [*See*, Pet. App. 44-48]. The Minnesota Supreme Court also acknowledged that Luban had actual knowledge Griffis lived and worked in Alabama [4]

All modern decisions by the Alabama Courts have upheld the exercise of jurisdiction over intentional torts

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[3] In effect, the Minnesota Supreme Court has transformed a limitation on the exercise of long arm jurisdiction in defamation claims, embodied in the Minnesota Long Arm statute, Minn. Stat. 543.19, subd. 1(d)(3), into a Due Process principle. Griffis v. Luban, 646 N.W.2d 527 (Minn. 2002).

[4] *See*, Griffis v. Luban, 646 N.W.2d at 535, fn.3 (Minn. 2002).

committed outside the state that cause foreseeable harm within Alabama. *See*, Brooks v. Inlow, 453 So.2d 439 (Ala.1984); Lowry v. Owens, 621 So.2d 1262 (Ala.1993); Leventhal v. Harrison, 1998 WL 242654 (Ala.). "Alabama courts have interpreted [Ala. R.Civ. P. 4.2(a)(2)(i)] to mean that the reach of the long arm statute extends as far as the United States Constitution permits." *See*, Lowry v. Owens, 621 So.2d 1262, 1264 (Ala. 1993); Baumhauer v. Groves, John & Westrup, Ltd., 844 F. Supp. 719, 722 (S.D.Ala. 1993).

Even though properly served pursuant to the Alabama Long Arm Statute, Luban's counsel advised she need not file an answer because Alabama did not have jurisdiction over her for posting messages on the Internet. Since Luban did not appear in Alabama to contest the defamation claim on the merits, a default judgment for $25,000 and an injunction were entered following a "prove up" hearing required by Alabama rule. [*See*, Pet. App., 12-13].

Griffis sought enforcement of the Alabama judgment in Minnesota, under the Full Faith and Credit Clause of the Constitution of the United States [U.S. CONST. Art. IV, sec.1] and the Uniform Enforcement of Foreign Judgments Act [Minn. Stat. Sec. 548.26 (1988)]. Defendant Luban filed a motion to vacate the judgment for lack of personal jurisdiction. [*See*, Pet. App. 14-15]. Griffis filed a memorandum in opposition to the motion to vacate with an affidavit and supporting documents detailing the numerous instances defendant Luban specifically referred to, or demonstrated awareness of, Griffis' employment and consulting activities in Alabama. [*See*, Pet. App. 20-43]. Luban's sworn affidavit did not deny that she knew Griffis lived and worked in Alabama or that she knew her postings about Griffis would be likely to cause harm to Griffis' reputation in her home state. [*See*, Pet. App.16-19].

Pursuant to the procedure required by the Eighth Circuit in Dakota Industries v. Dakota Sportswear, Inc., 946 F.2d, 1384, 1387 (8th Cir. 1991), facts presented to the district court through affidavits of both parties were read in the light most

favorable to the party asserting jurisdiction. In light of the "effects test" for personal jurisdiction in Calder, the **failure of Luban to deny** actual knowledge that Griffis' personal and profession activities were based in Alabama and that Luban **knew** her postings would have negative effects in Alabama, Ramsey County Referee Manuel Cervantes held:

> "2. Between December 1996 and June 1998, defendant posted approximately 100 messages of a derogatory nature towards the plaintiff.
>
> 3. Defendant's only contact with Alabama has been via Internet postings to a newsgroup accessible by anyone...including Alabama residents...the relevant Internet postings are as follows:
>
> A. Prior to April 25, 1998, plaintiff responded to defendants attacks by verifying her employment at the University of Alabama, her J.D. degree from the University of Birmingham (Alabama) and referring to her consulting business in Alabama.
>
> B. The Internet posting of April 25, 1996 indicates that the defendant knew that plaintiff was "from the great state of Alabama". (Pl. ex.A).
>
> C. The Internet posting of December 12, 1996 indicates defendant was aware of plaintiff's employment with the University of Alabama. (Pl.ex.B).
>
> D. In response to defendant's allegations, plaintiff's employer, the University of Alabama, Birmingham posted verification of plaintiff's employment with that institution, thus indicating that defendant's postings were reaching Alabama (Pl.ex.C) and were having an effect on plaintiff's professional standing in Alabama.

E. The March 28, 1997 posting includes defendant's reference to plaintiff's employment at the University of Alabama Special Studies Department, (Pl.ex.D, p.5); plaintiff's response responding to defendant's allegation with specific reference to plaintiff's employment in Alabama; (Pl.ex.D, p.6); reposting of the University of Alabama's response to defendant's attacks on plaintiff's credentials.(Pl.ex.D.P.7).

F. Defendant received actual notice that her statements were harming plaintiff in a letter from plaintiff's counsel dated May 20, 1997. (Pl.ex.E).

G. Defendant does not deny that she was aware that plaintiff resides in Alabama, that plaintiff is employed in Alabama; that she called plaintiff's employer in Alabama to question plaintiff's professional standing in Alabama and that her Internet postings were being distributed in Alabama." [*See*, Pet. App. 44-48].

The Minnesota Court of Appeals remanded the case to the district court on technical grounds in Griffis v. Luban, 601 N.W.2d 712 (Minn. App. 1999), without addressing the merits. In the interim, Luban received a discharge of the money judgment through bankruptcy. Luban then renewed her motion to vacate the remaining injunction and the case was re-assigned to Chief Judge Lawrence Cohen, who received additional memoranda in addition to the pleadings filed with Referee Cervantes, and heard oral argument on May 15, 2000. Ms. Luban did not request a hearing or submit any evidence contesting the reliability of the documents filed with Referee Cervantes.

Based on the evidence supplied to the district court by both parties in the form of affidavits and documents and the entire record, which included the findings of Referee Cervantes, the court issued a separate Order and

Memorandum on December 13, 2000, [*See*, Pet. App. 51-54 (emphasis added)] which included the following findings:

> Under Imo Industries, Inc. v. Kiekert AG, 155 F.3d 254, 265 (3rd Cir. 1998)...[T]o apply the 'effects' test, the plaintiff must show that : (1) The defendant committed an intentional tort; (2) The forum state was the focal point of the plaintiff's injury; (3) the defendants knew that the tortious act was aimed at the forum state.
>
> First, Defendant's action in the instant case constituted defamation according to the Alabama judgment. Second, Alabama was the specific location of Plaintiff's injury, as **Plaintiff cited several examples where the Defendant either referred to Plaintiff's location in Alabama or was notified that her writings were having "effects" in Alabama. Third, the Defendant never denied that she knew Plaintiff was located in Alabama, and that here allegedly defamatory messages would have an "effect" on Plaintiff's professional career in Alabama.**
>
> These facts evaluated in the light most favorable to the party claiming existence of jurisdiction showed that the Defendant was aware that her allegedly defamatory postings were having an "effect" in Alabama. Dakota Industries v. Dakota Sportswear, Inc., 946 F. 2d, 1384, 1387 (8th Cir. 1991)."

A unanimous panel of the Court of Appeals upheld the referee and district court rulings in Griffis v. Luban, 633 N.W. 2d 548 (Minn.App. 2001). The Court of Appeals held the State of Alabama properly exercised personal jurisdiction over Appellant under the "effects test" established by the United States Supreme Court in Calder v. Jones, 465 U.S. 783 (1984), based on facts evaluated in the light most favorable to

her claim of personal jurisdiction, as set forth in Dakota Industries v. Dakota Sportswear, Inc., 946 F.2d 1384 (8th Cir. 1991). Further, the Court of Appeals found Luban to be dishonest in continuing to assert in her pleadings, but not in her sworn affidavits, that she did not have actual knowledge her defamatory statements would have harmful "effects" in Alabama. Her sworn affidavits did not deny actual knowledge and her Internet postings specifically referred to Griffis' professional status and residence in Alabama. Griffis v. Luban, 633 N.W.2d 548 (Minn. App. 2001).

The Minnesota Supreme Court granted defendant Luban's petition for discretionary review and after briefing and oral argument, issued an opinion that acknowledged that Calder was the relevant precedent for evaluating the Due Process limits of the exercise of personal jurisdiction over the author of a defamatory work. Griffis v. Luban, 646 NW.2d 527 (Minn. 2002). However, that same Minnesota Supreme Court applied the Calder "effects test" in a manner completely inconsistent with the reasoning of Calder, itself.

Rather than upholding the sound application of Calder by the lower courts, the Minnesota Supreme Court created, a reading of the Calder "effects test" that, if applied to the facts in Calder, itself, would require a reversal of that holding. Under the Minnesota Supreme Court's application, the Calder "effects test" would permit the same author in Calder to post exactly the same Shirley Jones story on the Internet and yet be immune from suit in the California home forum. The Minnesota Supreme Court held that:

> Although the record **supported** the conclusion that Luban's statements were intentionally directed at Griffis, **whom she knew to be an Alabama resident,** we conclude that the evidence does not demonstrate that Luban's statements were 'expressly aimed' at the state of Alabama...nothing in the record indicates that the statements were targeted at the State of Alabama or at an Alabama audience beyond

Griffis herself..." Griffis, 646 N.W.2d at 535 (Minn.2002) (emphasis added).

Thus, even though the Minnesota Supreme Court conceded, as it must, that Luban had actual knowledge Griffis lived and worked in Alabama, (*See*, Griffis, 646 N.W.2d at 535, fn.3), the Minnesota Supreme Court held Griffis had an **additional** evidentiary obligation: i.e., to demonstrate that the messages were distributed and "read" in Alabama by third parties:

> **But, Griffis has not presented evidence that any other person in Alabama read the statements**...even if we assume Luban's statements were widely read by followers of sci.archeology news group, **the readers most likely would be spread around the country - maybe even the world - and not necessarily in the Alabama forum.** The facts that **messages posted to the newsgroup could have been read in Alabama,** just as they could have been read anywhere in the world, **cannot suffice to establish Alabama as the focal point of the defendant's conduct**....there is nothing in the factual record before us that **Luban's messages were read by any other person in Alabama, or by anyone in the academic community at the University of Alabama**. Griffis, 646 N.W.2d at 527. (emphasis added).

The plain language of the opinion makes clear that the Minnesota Supreme Court relied upon distribution in the forum and reading of the work by an audience in the forum to establish personal jurisdiction over the author of an Internet work. The Minnesota Court compounded its misreading of Calder by suggesting that **intentional attacks** on the reputation of another, written with full knowledge of where a plaintiff lives and works, and where their reputation

will be most seriously harmed, are not sufficient to establish personal jurisdiction:

> The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements. As a result, **even if Luban knew of should have known that defamatory statements about Griffis would affect her in her home state of Alabama, that alone is not enough** to demonstrate that Alabama was the focal point of Luban's tortious conduct. Griffis, 646 N.W.2d at 536 (emphasis added).

In response to the opinion of the Minnesota Supreme Court, counsel for Griffis filed a Petition for Rehearing [*See*, Pet. App. 85-96], in which the Minnesota Court was put on notice that: by requiring plaintiff to demonstrate distribution and reading in the forum by third parties to establish personal jurisdiction over an Internet author, the Minnesota Supreme Court has required factors that this Court specifically rejected in Calder, acts by third parties who are beyond the control of the defendant/author:

> Petitioners argue that they are not responsible for the circulation of an article in California. A reporter and an editor, they claim, have no direct economic stake in their employee's sales in a distant State. Nor are ordinary employees able to control their employer's marketing activity....Petitioners are correct that their contacts with California are not to be judged according to their employer's activities there....*See* Rush v. Savchuck, 444 U.S. 320 (1980) at 332, cited at Calder, 465 U.S. at 790.

Neither accessing the author's work from the Internet, nor downloading the work from the Internet, nor creating a hardcopy, nor reading of the work **by third parties**, are within the control of the Internet author, and cannot be considered in determining personal jurisdiction over the author for creating a work that the author knew, or should have known, was likely to cause harm in the plaintiff's home forum. The Minnesota Supreme Court was incorrect in reading Calder because, as in Calder, "the plaintiff was the focus of the activities of the defendant[s] of which this suit arises, *see*, McGee v. International Life Ins. Co., 355 U.S. 220 (1957), cited at Calder, 465 N.W.2d at 788. Defendant Luban wrote an article that she "knew would have a devastating impact upon [plaintiff]. And [she] knew that the brunt of that injury would be felt by [plaintiff] in the State in which she lives and works...." Calder, 465 U.S. at 789-90.

Further, a Due Process doctrine which establishes fair limits on the reach of personal jurisdiction can **never** be based on acts committed by parties **other** than the defendant. Rush v. Savchuck, 444 U.S. 320, 332 (1980); Calder, 465 U.S. at 790.

REASONS FOR GRANTING THE PETITION

Introduction

The fundamental question presented by this petition is: whether the Calder v. Jones "effects test", which must be applied to determine the existence of personal jurisdiction over authors of allegedly defamatory works, should also be applied in the same fashion to authors who choose to disseminate their work on the Internet, rather than through other media? Petitioner argues the Calder "effects test", which specifically excludes consideration of distribution in the forum as a factor in determining personal jurisdiction over a non-resident author, should apply in the same manner to authors who choose to publish on the Internet. The holding of the Minnesota Supreme Court requires plaintiffs

injured by Internet authors to meet a higher standard by requiring plaintiffs to establish the work was distributed and read by third parties in the forum, factors expressly rejected in Calder:

> Petitioners argue that they are not responsible for the circulation of an article in California. A reporter and an editor, they claim, have no direct economic stake in their employer's sales in a distant State. Nor are ordinary employees able to control their employer's marketing activity. The mere fact that they can "foresee" that the articles will be circulated and have an effect in California is not sufficient for an assertion of jurisdiction. Worldwide Volkswagen Corp. v. Woodson, supra, at 296. Petitioners liken themselves to a welder employed in Florida who works on a boiler which subsequently explodes in California. Cases which hold that jurisdiction will be proper over the manufacturer, Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57 (1969); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 176 N.E. 2d 761 (1961), should not be applied to the welder who has no control over and derives no direct benefit from his employer's sales in that distant State.
>
> Petitioner's analogy does not wash. Whatever the status of their hypothetical welder, petitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California. Petitioner South **wrote** and petitioner Calder **edited** an article that they knew or should have known would have a potentially devastating impact upon respondent. And **they knew the brunt of the injury would be felt by respondent in the State in which she lives and works** and in which the *National Enquirer* has its largest circulation. Under the

> circumstances, **petitioners must "reasonably anticipate being haled into court there" to answer for the truth of the statements made in their article.** Worldwide Volkswagen Corp. v. Woodson, *supra*, at 297; Kulko v. California Superior Court, *supra*, at 97-98; Shaffer v. Heitner, *supra*, at 216. An individual **injured in California need not go to Florida to seek redress from persons who,** although remaining in Florida, **knowingly cause injury in California.** Calder, 465 U.S. at 788-790 (Rehnquist, J.)(emphasis added).

1. Because the Internet is a major and growing means of worldwide communication, whether the "effects test" of Calder v. Jones, 465 U.S. 783 (1984) applies to the exercise of personal jurisdiction over authors who choose to use the Internet to disseminate allegedly defamatory statements, and how it applies, are questions of first impression before this Court which are crucially important for authors, injured potential plaintiffs, the public, commercial interests and the lower courts.

The explosive growth of the Internet over the past decade, as either a supplement or an alternative to electronic and print media, is a matter of public record of which this Court may take judicial notice. Before the Internet existed, worldwide circulation of an author's libelous accusations could only have occurred with the assistance of publishers and distributors of international scope. The publisher or the distributor could certainly be sued: (a) where they were based, Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408 (1984), or (b) where a significant number of copies were distributed, Keeton v. Hustler, 465 U.S. 770 (1984). In the pre-Internet world, the author was seldom the central figure in defamation claims. However, the Internet has completely changed this equation by eliminating publishers, editors, printers, distributors and broadcasters. The Internet

has changed the very nature of libel/defamation litigation itself.[5]

The Internet has "virtually" eliminated the capital intensive print or broadcast infrastructures that were necessary to reach a mass audience in the past, and has recast the author as the central actor in worldwide communication. Today, a worldwide audience is within the reach of anyone at a public library Internet connection. The Internet not only eliminates the roles of the publisher and distributor in litigation, but **it eliminates the act of physical distribution,** itself.

Without physical distribution of a hard copy by a publisher or a distributor, a plaintiff's choice of forums for defamation on the Internet is much more limited than the choices available to a plaintiff in a printed publication of world-wide scope. Further, an author who posts an offending work to a site in cyberspace cannot really be said to have physically distributed the work in **any** jurisdiction. This passive role is not the sort of "purposeful availment" of the benefits of a forum that traditionally has constituted distribution for purposes of personal jurisdiction. Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), Keeton v. Hustler, 465 U.S. 770 (1984).

All parties to this case agree the most analogous precedent in the jurisprudence of this Court is Calder v. Jones, 465 U.S. 783 (1984), the only case which establishes the standards for the exercise of personal jurisdiction over the **author** of a work, rather than the publisher or distributor. Since Internet authors are at the center of Internet defamation claims, and "distribution in the forum" by publishers and

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[5] For a discussion of the additional implications for the fundamental alteration to defamation litigation, the inadequacy of money damages as a meaningful remedy for Internet defamation or as a deterrent to prevent repetition of the harm, and the resulting First Amendment issues that arise from the inevitable increase in injunctive relief that Internet defamation requires, *see*, Erlinder, "The Brave New World of Defamation and Libel on the Web," *Minnesota Lawyer*, p.1 (Aug. 8, 2002)

distributors is no longer a factor in **any** Internet defamation case, this Court must soon clarify whether the Due Process limitations and standards established in Calder for personal jurisdiction over authors distributed in hard copy, should also apply to authors who choose the Internet to disseminate their works.

2. The Minnesota Supreme Court has struck down the exercise of personal jurisdiction by a sovereign sister state, based on a patently erroneous interpretation of Calder v. Jones, in direct contravention of its obligations under the Full Faith and Credit Clause and the Uniform Enforcement of Foreign Judgments Act.

> An individual injured in [her home forum] need not go to [the defendant's home forum] to seek redress from persons who, although remaining in [the defendant's home forum], **knowingly cause injury in** [the plaintiff's home forum]. Calder v. Jones, 465 U.S. at 790, (Rehnquist, J.) (insertions and emphasis added).

> ...**even if Luban knew or should have known that defamatory statements about Griffis would affect her in her home state of State of Alabama, that alone is not enough** to demonstrate that Alabama was the focus of Luban's tortious conduct. Griffis v. Luban, 646 N.W.2d at 546-37, (emphasis added).

The State of Alabama claims personal jurisdiction over intentional tortfeasors, including authors, who commit intentional acts outside of Alabama that cause injury within Alabama, within the limits of Due Process.[6] There can be no

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[6] *See*, Brooks v. Inlow, 453 So.2d 439 (Ala.1984); Lowry v. Owens, 621 So.2d 1262 (Ala.1993); Leventhal v. Harrison, 1998 WL 242654 (Ala.). "Alabama courts have interpreted [Ala. R.Civ. P. 4.2(a)(2)(i)] to mean that the reach of the long arm statute extends as far as the United States Constitution permits." *See*, Lowry v. Owens, 621 So.2d 1262, 1264 (Ala.

dispute that, absent finding constitutional infirmities, the Minnesota Supreme Court has an absolute obligation to enforce the judgments of sovereign sister jurisdictions under the Full Faith and Credit Clause of the Constitution of the United States, U.S. CONST., Art. IV, sec. 1 and the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. 548.26-.33(1988). In this case, the Minnesota Supreme Court declined to enforce an Alabama judgment based on a reading of the "effects test" of Calder v. Jones, 465 U.S. 783 (1984), which requires a plaintiff defamed on the Internet to show distribution and "reading" in the forum by third parties, factors which this Court specifically rejected in establishing personal jurisdiction over authors whose work appears in print or broadcast media.

In Calder, entertainer Shirley Jones, a California resident, brought a defamation action against the *National Enquirer*, the California distributor of the paper, the editor of the offending article and the author of the article. The *National Enquirer* and the distributing company answered the complaint and made no objection to the jurisdiction of the California court. However, the author and the editor of the story **did** contest personal jurisdiction in California. Calder, 465 U.S. at 785.

Other than writing and editing the article, neither the author nor editor had "regular and systematic" contacts with California, nor did they control distribution of the story they had written and edited. This Court agreed that personal jurisdiction over the author or editor of the article could not be based upon distribution of the article, since the author and editor had no control over the distribution system of the *Enquirer*, and the author and editor did not have sufficient personal physical contacts with California to establish general jurisdiction or specific jurisdiction. Calder, 465 U.S. at 789. However, this Court held, with respect to establishing personal jurisdiction over the author/editor of allegedly

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1993); Baumhauer v. Groves, John & Westrup, Ltd., 844 F. Supp. 719, 722 (S.D.Ala. 1993).

defamatory work, these factors are irrelevant. 465 U.S. at 788-790. Rather, this Court held personal jurisdiction with respect to author/defendants in defamation actions should be determined under an "effects test" that does not depend on the physical presence of the defendant writer/editor in the forum, nor does it depend on telephone contacts with the forum, except insofar as such activities are relevant to show that the intentional tortfeasor **knew or should have known** that their intentional acts would cause harm in California. 465 U.S. at 786-787, fn. 4, fn. 6.

In Calder, the Court **specifically rejected** the defendants' attempts to analogize the Due Process personal jurisdiction principles, applicable to the **intentional** tort of defamation, with tests derived from cases that involved **negligence** claims;

> Petitioners argue that they are not responsible for the circulation of an article in California. A reporter and an editor, they claim, have no direct economic stake in their employer's sales in a distant State. Nor are ordinary employees able to control their employer's marketing activity. The mere fact that they can "foresee" that the articles will be circulated and have an effect in California is not sufficient for an assertion of jurisdiction. Worldwide Volkswagen Corp. v. Woodson, *supra*, at 296. Petitioners liken themselves to a welder employed in Florida who works on a boiler which subsequently explodes in California. Cases which hold that jurisdiction will be proper over the manufacturer, Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57 (1969); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 176 N.E. 2d 761 (1961), should not be applied to the welder who has no control over and derives no direct benefit from his employer's sales in that distant State.

> Petitioner's analogy does not wash. Whatever the status of their hypothetical welder, petitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California. Petitioner South **wrote** and petitioner Calder **edited** an article that they knew or should have known would have a potentially devastating impact upon respondent. And **they knew the brunt of the injury would be felt by respondent in the State in which she lives and works** and in which the *National Enquirer* has its largest circulation. Under the circumstances, **petitioners must "reasonably anticipate being haled into court there" to answer for the truth of the statements made in their article.** Worldwide Volkswagen Corp. v. Woodson, *supra*, at 297; Kulko v. California Superior Court, *supra*, at 97-98; Shaffer v. Heitner, *supra*, at 216. An individual **injured in California need not go to Florida to seek redress from persons who,** although remaining in Florida, **knowingly cause injury in California.** Calder, 465 U.S. at 788-790 (Rehnquist, J.) (emphasis added).

Thus, the **means of distribution** of the allegedly defamatory statements, whether by newspaper or via the Internet, are not relevant in determining the existence of personal jurisdiction over the author or the editor of allegedly defamatory statements. Justice Rehnquist, writing for the Calder court, specifically **rejected** the analysis adopted by the Minnesota Supreme Court:

> Petitioners argue that they are not responsible for the circulation of an article in California. A reporter and an editor, they claim, have no direct economic stake in their employee's sales in a distant State. Nor are ordinary employees able to control their employer's marketing activity...Petitioners are

> correct that their contacts with California are not to be judged according to their employer's activities there....*See* Rush v. Savchuck, 444 U.S. 320, 322 (1980), cited at Calder, 465 U.S. at 790.

Justice Rehnquist's opinion in Calder makes clear that, **when the plaintiff's personal or professional reputation is at issue** "...the **plaintiff is the focus** of the activities of the defendants out of which the suit arises. *See*, McGee v. International Life Ins. Co., 355 U.S. 200, cited in Calder, 465 U.S. at 788.

The place where the victim of defamation "lives and works" is where the "brunt of the injury" to reputation will be felt most directly. This Court held that the defendants in Calder knew that, if the content of their story were to harm Shirley Jones, the "brunt" of that harm would be where Ms. Jones lived and worked:

> The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any state with which the defendant has 'certain minimum contacts...such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' Milliken v. Meyer, 311 U.S. 457, 463 (1940). International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). In judging minimum contacts, a court properly focuses on the 'relationship among the defendant, the forum, and the litigation' Shaffer v. Heitner, 433 U.S. 186, 204 (1977). *See also,* Rush v. Savchuk, 444 U.S. 320, 332 (1980). The plaintiff's lack of 'contacts' will not defeat otherwise proper jurisdiction, *see* Keeton v. Hustler Magazine, Inc., *ante* at 779-781, but they may be so manifold as to permit jurisdiction when it would not exist in their absence. **Here the plaintiff is the focus of the activities of the defendants out of which the suit arises.** *See,* McGee v. International

Life Ins. Co., 355 U.S. 220 (1957), cited in Calder, 465 U.S. at 788, (emphasis added).

Whether the article was distributed in the forum by the *National Enquirer*, a distributor, or via the Internet, was irrelevant with respect to the author or editor who merely produced the story. Hence, the additional element of distribution and reading in the forum state, required by the Minnesota Supreme Court, was specifically rejected by this Court in Calder:

> The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements. As a result, **even if Luban knew of should have known that defamatory statements about Griffis would affect her in her home state of Alabama, that alone is not enough to demonstrate that Alabama was the focal point of Luban's tortious conduct.** Griffis, 646 N.W.2d 536 (Minn. 2002) (emphasis added).

Thus, even though the Minnesota Supreme Court conceded that "Luban knew that Griffis resided and worked in Alabama.", the Court held that, "...even if Luban knew...that defamatory statements about Griffis would affect her in her home state, that alone is not enough to establish that Alabama was the focal point of Luban's tortious conduct." Id.

The Minnesota Supreme Court described the additional element it concluded was necessary, under its reading of Calder, plaintiff failed to establish whether Luban had "expressly aimed" her intentional torts at Alabama and had made Alabama the "target" or "focus" of the defamatory statements:

> ...Griffis has not presented evidence that any other person in Alabama read the statements...even if we assume Luban's statements were widely read by followers of *sci.archeology* news group, **the readers most likely would be spread around the country - maybe even the world - and not necessarily in the Alabama forum**. The facts that **messages posted to the newsgroup could have been read in Alabama,** just as they could have been read anywhere in the world, **cannot suffice to establish Alabama as the focal point of the defendant's conduct**....there is nothing in the factual record before us that **Luban's messages were read by any other person in Alabama, or by anyone in the academic community at the University of Alabama**. Griffis, 646 N.W.2d at 536, (emphasis added).[7]

Thus, according to the Minnesota Supreme Court, Griffis bore the burden at proving Luban's attacks were **distributed in Alabama**, and that they were **read in Alabama**, in direct contravention of the plain language of Calder.

In addition, since Due Process requires **only** the acts of the **defendant** can be considered in establishing personal jurisdiction over an author-defendant, Calder, 465 U.S. at 789, the suggestion that distribution or reading of an author's work in the forum **by persons other than the author** flies in the face of the underpinnings of the fundamental fairness requirements of International Shoe, 326 U.S. 310 (1945). Personal jurisdiction over **any** defendant cannot possibly be established by the acts of others who cannot be within the control of the defendant. Rush v. Savchuk, 444 U.S. 320, 332 (1980), cited in Calder, 465 U.S. at 789.

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[7] The Court misstates the facts. The record reflects that the University specifically responded to allegations by Luban, but this is irrelevant for "effects test" purposes.

3. The lower courts are split, regarding the proper application of the Calder v. Jones "effects test" to actions brought against authors of alleged defamatory works disseminated on the Internet.

The confusion in the lower courts with respect to the "effects test" of Calder is evident in a wide range of legal and equitable claims in which at least nine Circuits have relied on Calder, [in chronological order]: the Eighth Circuit[8], the Sixth Circuit,[9] the D.C. Circuit,[10] the Tenth Circuit,[11] the Fourth Circuit,[12] the Second Circuit,[13], the Ninth Circuit,[14] the Seventh Circuit,[15] the Third Circuit,[16] the First Circuit[17] and the Fifth Circuit.[18]

Calder is also cited in numerous district court cases **not** arising from defamation claims **against the author** of a defamatory work: LeVallee v. Parrot-Ice Drink Products of

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[8] Hicklin Engineering, Inc. v. Aidco, Inc., 959 F.2d 738 (8th Cir 1992).

[9] Reynolds v. International Amateur Athletic Federation, 23 F.3d 1110 (6th Cir. 1994).

[10] U.S. v. Ferrara, 54 F.3d 825 (D.C. Cir. 1995).

[11] Far West Capital, Inc. v. Town, 46 F.3d 1071 (10th Cir. 1995).

[12] Stover v. O'Connell Assoc. Inc., 84 F.3d 132 (4th Cir. 1996).

[13] Chaiken v. VV Publishing Corp., 119 F.3d 1018 (2nd Cir. 1997).

[14] Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414 (9th Cir 1997); Panavision Intern., L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998).

[15] Janmark v. Reidy, 132 F.3d 1200 (7th Cir. 1997).

[16] Imo Industries Ind. v. Kierkert, AG 155 F. 3d 254 (3rd Cir. 1998), In Imo Industries v. Kiekert AG, 155 F.3d 254 (3rd Cir. 1998) the Court held, "Imo cannot demonstrate that Kierkert, expressly aimed its tortious conduct at New Jersey. Failing this, Imo cannot rely on the Calder effects test..." Imo at 268. See also, Remick v. Manfredy, 238 F.3d 248 (3rd Cir. 2001).

[17] U.S. v. Swiss American Bank, Ltd, 274 F.3d 610 (1st Cir. 2002).

[18] Panda Brandywine, Corp. v. Potomac Elec. Power Co., 253 F.3d 865 (5th Cir. 2001).

American, Inc., 193 F. Supp.2d 296 (D.Mass. 2002); Oasis v. Judd, 132 F. Supp. 2d 612 (S.D. Ohio 2001); Cognigen Networks, Inc. v Cognigen Corp., 174 F.Supp.2d 1134 (W.D. Wash. 2001); Bailey v. Turbine Design, Inc., 86 F.Supp. 790 (W.D. Tenn. 2000); Management Insights, Inc. v. CIC Enterprises, Inc., 194 F.Supp.2d 520 (N.D. Tex. 2001); Schultz v. Ary, 175 F. Supp. 2d 959 (W.D. Mich. 2001); Shaw v. Excelon Corp., 167 F. Supp.2d 917 (S.D. Miss. 2001); Smirch v. Allied Shipyard, Inc., 164 F. Supp.2d 903 (S.D. Tex. 2001); Rogers, Lynch & Associated v. LaSalle Bank, N.A., 2001 WL 674162 (E.D. La. 2001); Dawson v. Pepin, 2001 WL 8222346 (W.D. Mich. 2001); On-Line Technologies v. Perkin Elmer Corp., 141 F. Supp.2d 246 (D.Conn. 2001); Metallic Ceramic Coatings, Inc. v. Precision Products, Inc., 2001 WL 1222227 (E.D. Pa. 2001); American Information Corp. v. American Infometrics, Inc., 139 F. Supp.2d 696 (D.Md. 2001); Neato, LLC v. Great Gizmos, Inc, 2000 WL 305349 (D.Conn. 2000); Gallant v. Trustees of Colombia University, 111 F.Supp. 2d 638 (E.D. Pa. 2000); Turbine Design, Inc., 86 F.Supp.2d 790 (W.D. Tenn. 2000); Hafner v. Infocure Corp., 2000 WL 1622750, (E.D. Pa. 2000); Lofton v.Turbine Design, Inc., 100 F. Supp.2d 404 (N.D. Miss. 2000); Origin Instruments Corp v. Adaptive Computer Sys., Inc. 1999 WL 76794 (N.D. Tex 1999); Coastal Video Comm. Corp., 59 F.Supp. 2d 562 (E.D. Va. 1999).

In cases involving defamation claims, the circuit courts have been less divided in determining the means by which a plaintiff can demonstrate the defendant "targeted" or "focus(ed)" their attack on plaintiff's home jurisdiction, when the author of the work IS at issue.

In Remick v. Manfredy, 238 F.3d 248 (3rd Cir. 2001), the court declined to exercise long arm jurisdiction over a defendant author because a letter distributed to "members of the boxing community does not target a particular state." In Reynolds v. International Amateur Athletic Federation, 23 F.3d 1110 (6th Cir. 1994), the court found that a press release: did not refer to activities in the forum, involved a medical

test not performed in the forum, did not mention plaintiff's residence in the forum and did not "focus" on the forum. This analysis is completely consistent with Calder and, on the facts before this Court, actually **supports** the exercise of jurisdiction in the case at bar.

In Hicklin Engineering, Inc. v. Aidco, Inc., 959 F.2d 738 (8th Cir 1992), "Hicklin alleged that Aidco had sent correspondence **containing defamatory statements** to several of Hicklin's customers and interfered with its business. None of the correspondence, however, was published in Iowa." Hicklin, 959 F.2d 738 (emphasis added). Hicklin does not address the exercise of personal jurisdiction over the author of the work, but rather relies on distribution by the employer, just as South's story was distributed by his employer:

> Calder, president and editor of the *Enquirer*, was a Florida resident and had only been to California twice, both times on unrelated matters. The Calder Court, approving of the effects test used by the lower court, held that personal jurisdiction in California existed even though the article had been written and edited in Florida and Calder's visits to California were unrelated to the suit. However, it was more than mere effects that supported the Court's holding. The Court found that Calder intentionally aimed his tortious action at California and could, therefore, have 'reasonably anticipate[d] being haled into court there.' Id. at 790, 104 S.Ct. at 1487 (quoting Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980). Additionally, the *Enquirer* had a substantial percentage of its national circulation in California." Hicklin, 959 F.2d 738.

While this may be an accurate description of the role of the publisher or distributor in Calder, the "effects test" was actually applied to defendant-**writer** South and defendant

Calder [acting as an editor], Calder specifically rejected consideration of any actions by third parties, including "distributing and reading", in the forum.

Uneven application of Calder is endemic in the lower courts. In Barrett v. Catacombs Press, 44 F.Supp.2d 717 (E.D. Pa. 1999) in which personal jurisdiction was not found to exist in the absence of a showing that defendant knew the forum in which the plaintiff lived and worked, did not reveal knowledge of the forum in which the "brunt" of the allegedly defamatory statements might felt. According to the court in Barrett, jurisdiction did not lie in Pennsylvania **because**, "Plaintiff cannot point to any defamatory statements that attack him **in his capacity as a Pennsylvania Psychiatrist** or any postings by the Defendant that intended to target Internet users in Pennsylvania." Barrett, 44 F.Supp.2d at 732 (emphasis added).

In discussing the application of the Calder "effects test", the Barrett court made clear, "All these defamatory statements associate Plaintiff with his work with the Quackwatch Web site and **not as a psychiatrist practicing in Pennsylvania**". Barrett, 44 F.Supp.2d at pp.732-33 (emphasis added). Since defendant did not admit she knew where plaintiff lived or worked, and none of the defamatory statements in Barrett made any reference to Pennsylvania or the Plaintiff's professional standing in Pennsylvania, the court concluded that the statements were not "expressly aimed" at Pennsylvania. Id.

In Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998) the court upheld jurisdiction over a California defendant in the District of Columbia although neither the defendant, nor the Website the defendant maintained were physically located in the District of Columbia, because the content of the Website "particularly focuses on Washington gossip." Blumenthal, 992 F.Supp at 57. In Revell v. Lidov, 2001 WL 285253 (N.D. Tex. Mar. 2001), counsel for defendant stated, unlike the article in Calder:

> **[the] article has nothing to do with the Plaintiff's position as a resident, community member, or community leader in the state of Texas.** Like the Plaintiff in Barrett, this Plaintiff has himself highlighted the fact of his national and international reputation...In light of the national and international character of the Plaintiff's career and the activities described in the article, the Plaintiff cannot successfully argue that the Defendants purposefully directed their Internet posting to the state of Texas, with the knowledge that its effects would be felt there. Revell 2001 WL 285253 at 7-8. (emphasis added)

In Bailey v. Turbine Design, Inc., 86 F. Supp. 790 (W.D.Tenn. 2000), "Plaintiff was not attacked as a Tennessee businessman. Indeed, the alleged defamatory comments had nothing to do with plaintiff's state of residence." Bailey, 86 F.Supp at 796. Lofton v. Turbine Design, Inc., 100 F.Supp.2d 404 (N.D. Miss. 2000) was a business tort case in which the court found, "...Mississippi is not the focal point nor necessarily the locale of the alleged harm suffered. The information posted was focused on a Tennessee resident, Gordon Bailey,...who is not a party to this action." Lofton, 100 F.Supp. at 411.

In William Rosenstein & Son Co. v. BBI, Produce, Inc., 123 F. Supp.2d 268 (M.D. Pa. 2000), the district court relied on distribution in the forum, which Calder rejected with respect to the author of defamatory statement. Nicosia v. DeRooy, 72 F.Supp. 2d 1093 (N.D. Cal.), did not cite Calder, but **upheld** jurisdiction over an author of allegedly defamatory statements that **did not** include references to the forum state. Rather, under the "purposeful availment" test, the court held that 11 out of 100 e-mails addressed to California recipients was sufficient to invoke personal jurisdiction, [*citing*, Gordy v. Daily News, L.P., 95 F.3d 829 (9th Cir. 1996), which **upheld** jurisdiction over a newspaper that distributed 13 to 18 copies in California].

Oasis v. Judd, 132 F.Supp.2d 612 (S.D. Ohio 2001), also fails to cite Calder, in discussing either trademark or defamation claims arising from postings on a Website. Of course, Calder does not necessarily apply to trademark issues. However, with respect to the defamation claim, the court cited United States Supreme Court cases related to contract and negligence claims, (i.e. Burger King v. Rudzewicz, Asahi Metal Industry Co. v. Superior Court; Worldwide Volkswagen v. Woodson, cited at 132 F.Supp.2d 612, 618-619) that do not apply to intentional torts. The court failed to consider the relevance of Calder to the intentional tort claim before it.

Similarly, the state courts have also struggled with the application of the "effects test" of Calder. In Kane v. Coffman, 2001WL 914016 (Del. Super. Ct. 2001) the defendant did not admit knowledge of plaintiff's home forum and the statements did not specifically refer to plaintiff's location. The court held that sending 10 non-defamatory e-mails to addresses in California inviting viewing of the defamatory Website met the "purposeful availment" test. Under Calder, such acts would also show that the defendant intended to cause harm in the forum. *See also,* Sante Fe Technologies, Inc. v. Argus Networks, Inc., 42 P.2d 1221 (N.M.App. 2001); Bils v. Bils, 22 P.3d 38 (Ariz. 2001); Cohen v. Barnard, Vogler & Co., 13 P.3d 758 (Ariz. App. 2000); Bayway Refining Co. v. State Utilities, Inc., 755 A.2d 1204 (N.J. Super. A.D. 2000); Hollis v. Info Pro Technology, 764 So. 2d 184 (La.App. 2000); Televentures, Inc. v. International Game Technology, 12 S.W.3d 900 (Tex.App. 2000).

The lack of clarity with respect to the proper application of the Calder v. Jones "effects test" in the lower courts is exemplified by the case at bar, in which the Minnesota Supreme Court required Griffis to rely on the acts of third parties, in asserting personal jurisdiction over Luban, precisely the method that was rejected by this Court in Calder v. Jones.

CONCLUSION

For the foregoing reasons, Katherine Griffis respectfully prays this Court grant the requested writ to uphold Calder v. Jones and prevent the Minnesota Supreme Court from violating its obligations to enforce valid judgments from sister states under the Full Faith and Credit Clause of the Constitution of the United States of America through misapplication of the settled precedent of this Court.

Dated: November 11, 2002

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IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION

KATHERINE GRIFFIS

PLAINTIFF,

VS. CV9705873

MARIANNE LUBAN

DEFENDANT.

COMPLAINT

INTRODUCTION & PARTIES

1. This is an action brought by plaintiff alleging that defendant has engaged in a campaign of defamation and libel against her over several months in which her personal and professional integrity has been repeatedly attacked by false statements. These statements have been published throughout the world to unknown numbers of people. Publication has occurred throughout the state of Alabama. In addition, plaintiff alleges that her right to privacy has been violated by defendant by publication to the same people of private communications initiated by plaintiff.

2. Plaintiff is a resident of Jefferson County, Alabama and has been at all times relevant to this complaint. She is self-employed as a consultant on matters including international protocol, grant development activities and museum consulting. Integral to her business is communication with clients, prospective clients, and other contacts on the Internet.

3. On information and belief, plaintiff alleges that defendant is, and has been at all times relevant to this complaint, a resident of St. Paul, Minnesota. She is a regular

user of the Internet on which she is known by the sobriquet "Saida."

FACTS

4. The Internet is a computer-based international system which permits world-wide access to others and communication with others by computer messages and information sent through telephone lines. One of the methods of communication is the use of "newsgroups," which are public interactive forums on particular specified topics, of interest to the participants, in which people may engage in discussion, debate, exchanges and general intercourse. Newsgroup participants may contribute to the discussion by entering information, opinion or other contributions through their computers and sending, or "posting," those messages to the entire newsgroup. In general, participation in a newsgroup is open to anyone with an interest in the topic being discussed.

5. Plaintiff and defendant have both participated in a newsgroup on archeology. Discussions within the newsgroup have included, among other things, discussions about Egypt and Egyptology. In the course of those discussions, plaintiff and defendant have often disagreed on various issues relating to Egyptology.

6. Plaintiff has had an ongoing interest in archaeology generally and Egyptology in particular for many years, and has studied the topic at the collegiate level.

7. Plaintiff has, since 1980, taught Special Studies classes on a periodic basis at the University of Alabama at Birmingham (UAB) on Egypt and Egyptology. Special Studies are offered by the university to the general public, primarily to those who are not enrolled as students and who are not matriculating at the University. The classes generally do not confer credit towards degrees.

8. Plaintiff is a member of the International Association of Egyptologists, an organization of professional Egyptologists. Membership in the organization is conferred

upon application by a potential member, recommendation by two current members and approval by the entire membership.

9. Plaintiff's name is also found on certain lists of Egyptologists which identify her as a potential resource.

10. When plaintiff has posted messages to the archaeology newsgroup referred to in this complaint, she has identified herself with her real name and further identified herself as having an affiliation with the UAB Special Studies division and as being a member of the International Association of Egyptologists.

11. Plaintiff is a graduate of the Birmingham School of Law, which has conferred upon her the degree of Juris Doctor. She is not a practicing attorney.

12. In addition to newsgroups, the Internet provides individuals the means to communicate through electronic mail (e-mail). E-mail involves private communications between specific individuals. Internet protocol generally requires that messages sent by private E-mail not be made public without the consent of the sender. In contrast, a posting to a newsgroup is seen by anybody who chooses to view the postings in that newsgroup.

13. Plaintiff and defendant posted items about Egyptology to the newsgroup and had some disagreements. Defendant then accused plaintiff of not being an Egyptologist, at which point plaintiff communicated with defendant via e-mail with the expectation that the communication, and any response and resulting discussion, be kept private. Defendant posted the entire e-mail exchange to the newsgroup despite plaintiff's express expectation of, and desire for, privacy.

14. Following this exchange, beginning in December 1996, defendant posted a number of attacks upon plaintiff in which she made the following accusations:

1. She called plaintiff a liar;

2. She asserted that plaintiff's membership in the International Association of Egyptologists was obtained by

plaintiff misrepresenting her qualifications to that organization;

3. She claimed that plaintiff's being included in other lists of Egyptologists was likewise was because plaintiff misrepresented her qualifications;

4. She claimed that plaintiff was not affiliated with UAB;

5. She asserted that plaintiff was untruthful when she identified herself as having a Juris Doctor degree after making a comment on an issue of law;

6. She asserted that plaintiff's consulting business was not legitimate.

15. Defendant, after making these initial allegations, called the Special Studies Division at UAB to determine whether or not plaintiff was affiliated with the University. She was told that plaintiff was teaching a course that quarter in grant writing and did not inquire further as to what, if any, courses plaintiff had taught in the past.

16. Defendant then posted to the newsgroup the accusation that, while plaintiff may teach a class at UAB, the only class she teaches is in grant writing and, therefore, her claims regarding her academic credentials particularly relating to Egyptology were false.

17. On December 23, 1996, the UAB Special Studies Division posted a message affirming plaintiff's affiliation, her teaching status, and stating that she was an instructor in Egyptian history for the University.

18. On May 20, 1997 demand was made on defendant, through counsel, to refrain from making false allegations against plaintiff in the future and to retract her prior claims. The copy of the letter making that demand is attached to this complaint as Exhibit A.

19. After receipt of the letter, the defendant reiterated her accusations that plaintiff is a liar. She further continued to claim that plaintiff did not teach classes in Egyptology at UAB

20. Plaintiff alleges that the statements made by the defendant were false and were intended to, and did, directly impugn her professional reputation.

21. Plaintiff further asserts that defendant either knew that the statements that she made were false or that she made those statements with reckless disregard as to whether or not they were true or false.

22. Plaintiff further alleges that, particularly by posting private E-mail to the newsgroup, defendant subjected her to unwarranted publicity and publicized a private matter between the parties with which the public had no legitimate concern.

23. All postings to the archeology newsgroup are "archived," which means they are not maintained for future reference. Therefore, defendant's postings may be retrieved or otherwise seen by additional people in perpetuity.

COUNT ONE

24. Plaintiff adopts and incorporates all the preceding allegations contained in this complaint.

25. Defendant's actions as herein described defamed plaintiff.

WHEREFORE, PLAINTIFF SEEKS THE FOLLOWING RELIEF:

1. Such compensatory and punitive damages as a jury may award;

2. A permanent injunction ordering defendant not to publish, in any form or manner and, in particular, via the Internet, her prior false allegations against plaintiff and requiring her to retract those false statements. already made in the same forums in which they were originally made;

3. Her costs for pursuing this matter;

4. Such other further and different relief as to which she may be entitled.

COUNT TWO

26. Plaintiff adopts and incorporates all the preceding allegations contained in this complaint.

27. Defendant's actions as herein described invaded plaintiff's right to privacy.

WHEREFORE, PLAINTIFF SEEKS THE FOLLOWING RELIEF:

1. Such compensatory and punitive damages as a jury may award;

2. Her costs for pursuing this action.

3. Such other further and different relief as to which she may be entitled.

/s/
David Gespass
GESPASS & JOHNSON
P.O. Box 550242
Birmingham, Alabama
35255 205-323-5966
Attorney for Plaintiff

PLAINTIFF DEMANDS TRIAL BY JURY

IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION

KATHERINE GRIFFIS

PLAINTIFF,

VS. Case No. CV 97-5873

MARIANNE LUBAN,

DEFENDANT.

INJUNCTION

A hearing was held on Plaintiff's application for default on January 9, 1998. Appearing were Plaintiff and her counsel. Based upon the default of the Defendant and the testimony adduced at the hearing, the Court finds as follows:

1. Defendant has published on the Internet a number of false statements concerning the Plaintiff. Specifically, she has made the following statements:

A. She has called Plaintiff a liar;

B. She has alleged, directly and by implication, that Plaintiff secured membership in the International Association of Egyptologists and placement on other lists of Egyptologists or membership in other Egyptological organizations by misrepresenting her qualifications when applying to those organizations and lists;

C. She claimed that the Plaintiff was not affiliated with the University of Alabama at Birmingham and that she had not taught courses in Egyptology in the Special Studies Department of the University of Alabama at Birmingham;

D. She claimed that Plaintiff lied when she identified herself as having a Juris Doctor degree;

E. She alleged that the consulting business Plaintiff conducts is not legitimate; and

F. She has referred to Plaintiff as a "con-artist," a "scam-artist" and a "phony."

2. Plaintiff conducts a consulting business, a significant part of which is through use of the Internet and the World Wide Web. Part of her business is based upon her background and expertise in Egyptology, and her ability to carry out on her business is threatened by the statements that have previously been made and would be threatened by any further false statements. However, such potential harm would not be quantifiable.

3. In light of the foregoing, Plaintiff has no adequate remedy at law and the issuance of an injunction prohibiting Defendant from repeating her false statements is necessary to protect Plaintiff's rights.

Therefore, it is **ORDERED** and **ADJUDGED** as follows:

1. That defendant be, and hereby is, permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:

A. that Plaintiff is a liar;

B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;

E. that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

F. that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

G. that Plaintiff does not possess a Juris Doctor degree;

H. that Plaintiff is not engaging in a legitimate consulting business.

2. That a violation of the provisions of this injunction shall constitute a contempt of this Court by Defendant.

DONE & ORDERED

s/ [Illegible]
CIRCUIT JUDGE

CVL035I CV 97 005873

JUDGE: WILLIAM A. JACKSON

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CIRCUIT CIVIL

FILED IN OFFICE
MAR 6 1998
POLLY CONRAD
Clerk

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

KATHERINE GRIFFIS VS MARIANNE LUBAN
FILED: 09/23/97 TYPE: DEFAMATION TYPE TRIAL: JURY TRACK:

DATE1: CA: CA DATE:
DATE2: AMT: $.00 PAYMENT:

PLAINTIFF 001: GRIFFIS KATHERINE
XDAVID GESPASS ATTORNEY: GESPASS, DAVID A
P O BOX 550242
BHAM, AL 35255-0000 323-5966
PHONE: 000-0000
ENTERED 09/24/97 ISSUED: TYPE:
SERVED ANSWERED: JUDGEMENT:

DEFENDANT 001: LUBAN MARIANNE
2285 STEWART AVE APT 2314 ATTORNEY: *** PRO SE ***
ST PAUL, MN 55116-0000
PHONE: 000-0000
ENTERED 09/24/97 ISSUED: TYPE:
SERVED 10:7:97 ANSWERED: JUDGEMENT:

9 23 97 StC

12-3-97 APPLICATION AFFIDAVIT & ENTRY OF DEFAULT
12-17-97 Upon motion of plaintiff, supported by affidavit,
judgment by default is rendered in favor of plaintiff
and against the defendant Marianne Luban
with leave to prove damages, 30 days.

Judge

1-14-98 Injunction order as per separate paper.

Judge

1/26/98 Motion Dent - Dos

3/27/98 Default judgment with leave to prove damages having heretofore been entered December 17, 1997, comes now the plaintiff evidence and testimony presented to this court; damages are fixed and assessed in the amount of Twenty Five Thousand and No/100($25,000.00) Dollars, plus cost of court.

CIRCUIT JUDGE

092497 Waste Cert / Under Acts.

Fr

11

A-12

BEST AVAILABLE COPY

CVL0312 ALABAMA JUDICIAL DATA CENTER

JEFFERSON COUNTY

CERTIFICATE OF JUDGEMENT

CV 97 005873.00

WILLIAM A. JACKSON

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

KATHERINE GRIFFIS VS MARIANNE LUBAN

DEFENDANT
LUBAN MARIANNE
2285 STEWART AVE APT 2314
ST PAUL ,MN 55116-0000

PARTY'S ATTORNEY:
*** PRO SE ***

I, POLLY CONRADI (CV) , CLERK OF THE ABOVE NAMED COURT HEREBY CERTIFY THAT ON 02/27/98 PLAINTIFF, GRIFFIS KATHERINE. RECOVERED OF DEFENDANT IN SAID COURT A JUDGEMENT WITHOUT WAIVER OF EXEMPTIONS FOR THE SUM OF $25,000.00 DOLLARS PLUS $.00 DOLLARS COURT COSTS, AND THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS: GESPASS, DAVID A

02/27/9B DEFAULT JUDGMENT RENDERED IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT MARIANNE LUBAN AND DAMAGES ARE FIXED AND ASSESSED IN THE AMOUNT OF $25,000.00 AND ALL COSTS ARE TAXED AS PAID.

JUDGE WILLIAM JACKSON

GIVEN UNDER MY HAND THIS DATE 03/16/98

/s/

CLERK: POLLY CONRADI (CV)
801 W. 21ST ST ROOM 901

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: Other

Katherine Griffis, Court File No. C1-98-4573

Plaintiff,

v. **NOTICE OF MOTION AND MOTION**

Marianne Luban,

Defendant.

TO: Katherine Griffis, the above-named Plaintiff, and to Carl Peter Erlinder, 566 Marshall Avenue, St. Paul, MN 55104, her attorney:

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the defendant will bring the attached Motion on for hearing before the Honorable Referee Mary Ellen McGinnis, in Room 1640, Ramsey County Courthouse, 15 West Kellogg Blvd., St. Paul, MN 55102, on the 16th day of June, 1998, at 3:45 p.m., or as soon thereafter as counsel can be heard.

MOTION

Defendant moves the Court for an Order as follows:

1. Vacating the foreign judgment from Jefferson County, Alabama, on the following grounds:

   a. The judgment is void;

   b. The judgment violates due process under the United States and Minnesota Constitutions;

c. The judgment is not entitled to full faith and credit;

d. The state court of Alabama does not and did not have jurisdiction over the defendant.

2. Granting to the defendant her costs and disbursements incurred in this action, including reasonable attorney fees.

3. For such other and further relief as to the Court may seem just and equitable.

Said motion will be made on the attached affidavit, on all the files, records, and proceedings herein, and on the laws of the State of Minnesota.

Dated: May 27, 1998.

PERLMAN LAW OFFICE

By /s/_____

Michael L. Perlman, #85212
333 Parkdale Plaza
1660 South Highway 100
St. Louis Park, MN 55416
(612) 591-9444

Attorney for Defendant

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: Other

Katherine Griffis, Court File No. C1-98-4573

Plaintiff,

v. **AFFIDAVIT OF MARIANNE LUBAN**

Marianne Luban,

Defendant.

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Marianne Luban, the above-named defendant, being first duly sworn, states as follows:

1. I am the defendant and judgment debtor in the above referenced matter. I have received notice of entry of a judgment docketed in Ramsey County on or about May 7, 1998. This arises out of an alleged action against me by one Katherine Griffis, who filed a complaint in Jefferson County, Alabama. For the reasons hereinafter set forth, I request that the Court vacate the foreign judgment on the grounds set forth in my motion.

2. At the outset, I want to point out that I have never set foot in the the state of Alabama; I have never transacted any business in that state; I have never communicated with anyone in that state; I have had nothing to do with the state of Alabama; I have had no contacts within the state of Alabama for business or personal reasons.

3. On or about October 1, 1997, 1 received in the mail a summons and complaint which alleged, among other things, that I had defamed the plaintiff over a period of several months, by making false statements against her over the Internet. A copy of the complaint is attached hereto as Exhibit A.

4. To say the least, I thought that this complaint was ludicrous and intended to harass me. The complaint sought relief of "compensatory and punitive damages as a jury may award" and a permanent injunction ordering me not to publish, via the Internet, prior false allegations against the plaintiff and requiring me to retract false statements made in the same forums in which they were originally made. See Exhibit A, page 6. The complaint states, in capital and bold letters, at the bottom of page 7, that "plaintiff demands trial by jury".

5. I contacted my attorney, Michael Perlman, to review this complaint. My attorney stated that he felt that this claim against me was without merit and that the state court of Alabama did not have jurisdiction over me in this case. My attorney sent a letter to the plaintiff's lawyer on October 14, 1997. See Exhibit B attached. My attorney received a response from the plaintiff's attorney on November 17, 1997. See Exhibit C attached.

6. Another letter was sent to my attorney, which he received on December 11, 1997. See Exhibit D attached. My attorney responded to that letter on the same day. See Exhibit E attached. My attorney received another letter from the plaintiff's attorney several days later. See Exhibit F attached. My attorney responded with a letter to the plaintiff's attorney on December 17, 1997. See Exhibit G attached.

7. On December 23, 1997, my attorney received a letter dated December 19, 1997 from the plaintiff's attorney. See Exhibit H attached. On December 30, 1997, my attorney sent a letter to. the plaintiff's attorney. See. Exhibit I attached.

8. My attorney heard nothing further from the plaintiff's attorney in Alabama, and upon advice of my counsel, I took no further action on this case. On March 7,

1998, I saw an announcement that the plaintiff posted on the Internet on March 4, announcing a "final decision of January 14, 1998" of the action by the plaintiff. See Exhibit J attached. This announcement stated that I was "found liable for defaming plaintiff" and that "an award of money damages was made to plaintiff". There was no indication of the amount of the monetary damages. In addition there was no indication that there had been a jury trial as demanded by the plaintiff in her complaint.

9. I consulted with my attorney after observing this Internet posting, and my attorney advised me that we should take no action on this case, unless the plaintiff attempted to docket this Alabama action in Minnesota. On or about May 11, 1998, I received notice of entry of a foreign judgment, which is the subject of this pending matter and my motion. The notice states that a judgment in the amount of $25,000 was entered against me on February 27, 1998 in Jefferson County, Alabama. See Exhibit K attached.

10. I feel that this entire proceeding commenced by the plaintiff is outrageous and intended to harass me indefinitely. As stated above, I have had no contact with the state of Alabama and my attorney has advised me that it is in violation of my rights of due process for that court to enter a judgment against me under the circumstances raised in this proceeding. In addition, a judgment in the amount of $25,000 was supposedly entered against me, without any basis for determining that amount. Further, while plaintiff demanded a jury trial in the Alabama proceeding, there is no evidence that such a trial ever occurred. Further, I could not possibly afford to go to Alabama to defend this frivolous law suit or any other lawsuit. For these reasons, and for the reasons stated above, I respectfully request that this Court vacate the foreign judgment entered against me for the reasons set forth in my motion.

FURTHER AFFIANT SAYETH NOT.

/s/
Marianne Luban

Subscribed and sworn to before
me this 26th day of May, 1998.

s/Kathleen M. Muller
Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Katherine Griffis, Court File No. C1-98-4573

Plaintiff,

v. **Affidavit of Katherine Griffis**

Marianne Luban,

Defendant.

STATE OF ALABAMA)
)ss.
COUNTY OF JEFFERSON)

Katherine Griffis, the above-named Plaintiff, being duly sworn, deposes and states as follows:

1. I am a resident of Jefferson County, Alabama and have been a resident of Alabama at all times relevant to this matter I am self-employed as a consultant on matters including international protocol, grant development activities and museum consulting. Integral to my business are communications with clients, prospective clients and other contacts on the Internet.

2. Defendant and I have both participated in an Internet newsgroup on archeology. Discussions within the newsgroups have included discussions about Egypt and Egyptology. This newsgroup may be accessed by anyone who has Internet connections and is frequently accessed by my professional colleagues worldwide.

3. When I have posted messages to the archeology newsgroup, I have identified myself with my name, with my affiliation with the University of Alabama at Birmingham

and as a member of the International Association of Egyptologists. As early as April 1996, Defendant's newsgroup postings indicated that she was aware that I was located in Alabama. (Plaintiff's Exhibit A). Upon information and belief, Defendant was aware that I reside in Alabama at least as of this date and that her postings had already reached into Alabama.

4. Messages posted to the newsgroup, as distinguished from private e-mail, are not private communications and may be read anywhere, anytime, by anyone who is connected to the Internet.

5. In December, 1996, Defendant posted a message on the newsgroup accusing me of not being an Egyptologist to which I responded privately, denying the Defendant's allegation and referring to my professional credentials, including my association with the University of Alabama at Birmingham and the location of my consulting business in Alabama.

6. Following my private e-mail message, Defendant began posting a series of public attacks upon my veracity and my professional credentials including that I was not affiliated with the University of Alabama; that I did not have a law degree from the Birmingham (Ala.) School of Law; that my Alabama-based consulting business was not legitimate. Upon information and belief Defendant's postings indicate that she was aware that I reside in Alabama and that her postings would have an effect on my professional standing in Alabama. (Exhibit B, p.3).

7. Also in December, 1996, Defendant contacted the Special Studies Division at the University of Alabama at Birmingham by phone, and, after doing so, posted on the newsgroup the false allegation that my teaching at the University was limited to grant writing. Upon information and belief, this phone contact with the University of Alabama at Birmingham regarding my association with that institution indicates that Defendant knew her postings were reaching Alabama and intended her postings to have an impact in Alabama.

8. In response to Defendant's defamatory postings and to her personal inquiries, on December 23, 1996, the University of Alabama at Birmingham Special Studies Division posted a message confirming my position as an instructor in Egyptian history. (Exhibit C). In March 1997, I reposted the University of Alabama at Birmingham message referring to my association with that institution. (Exhibit D, pp.5-7). Upon information and belief each of these postings put Defendant on notice that I was affiliated with the University of Alabama and that her postings were reaching Alabama and having a impact on my professional standing in that state.

9. Between December 1996 and May 1997, Defendant continued to post defamatory and libelous statements on the newsgroup. The total number of postings during this period was approximately forty five (45).

10. On May 20, 1997 demand was made on defendant, through Alabama counsel, to refrain from making false allegations against me in the future and to retract prior claims. (Exhibit E). Upon information and belief, at least as of May 20, 1997, Defendant was on actual notice that her defamatory postings to the Internet newsgroup were being received in Alabama and were causing injury in Alabama.

11. Subsequently, Defendant acknowledged receipt of the letter but resumed her accusations in her Internet postings to the effect that I am liar and that I did not teach classes in Egyptology at the University of Alabama at Birmingham.

12. Between May 1997 and October 1997, Defendant continued to post defamatory messages to the newsgroup. The number of messages posted during this period was in excess of ten (10). From the period of December 1996 through October 1997, Defendant posted 275 messages to newsgroup sites that Defendant had reason to know were reaching Alabama, of which approximately 66 referred to me, and approximately 55 of the postings that referred to me were of a defamatory nature.

13. Defendant's counsel acknowledged receipt of the Complaint in this matter on or about October 14, 1997. After receipt of the Complaint in October 1997, Defendant continued to post defamatory messages on the newsgroup. Between October 1997 and the issuance of the default judgement in this matter in February 1998, Defendant posted approximately seven (7) defamatory messages on the newsgroup site.

14. Between February 1998 and the present, Defendant has upon information and belief violated the injunction issued in this matter by posting approximately fifty (50) defamatory messages on the newsgroup site in direct violation of the terms of the injunction.

15. All postings to the archeology newsgroup are "archived", which means that they are maintained for future reference. Therefore, Defendant's postings may be retrieved or otherwise seen in perpetuity by anyone with access to the Internet, thus, creating a continuing harm to me and my professional reputation.

FURTHER AFFIANT SAYETH NOT.

signed:

/s/_____

Katherine Griffis

Signed and sworn to before me
this 8th day of June, 1998.

s/Elizabeth Rolad Beaven
Notary Public

Subject: Re: IMPOTENCE IN ARAB MALES
From: UQRC19A@prodigy.com (Marianne Luban)
Date: 1996/04/25
Message-ID: <4lobml$euc@usenetp1.news.prodigy.com>
Distribution: world
References: <4lllp5$iq7@sam.inforamp.net>
<4lnb49$8u7@newsl.hl.usa.pipeline.com>
Organization: Prodigy Services Company 1-800-PRODIGY
Newsgroups: soc.culture.egyptian

Dear Kat--Your being from the great state of Alabama speaks volumes (even though you do not express yourself very eloquently) about who you are and what you are!

Subject: Re: Phoney Egyptologists

From: Saida <saida@PioneerPlanet.infi.net>

Date: 1996/12/21

Message-ID: <32BC0116.5010@PioneerPlanet.infi.net>

Newsgroups: sci.archaeology

Maresh wrote:

First, my apologies to everyone for the duplication.

I wanted to be sure that Saida reads this challenge to supply evidence to support her thus far wholly unsubstantiated and libellous allegations against Katherine. By posting this, circumventing her kill-file, her failure to do so will be seen for what it is, evidence of her own treachery and/or malice.

Of course, in archaeology, lack of evidence is not evidence of lack. However, in science, a contention can really only be proven by presentation of incontrovertible evidence to a peer review panel. Here is the panel Saida, the good readers of this newsgroup.

Now, where is the evidence?

On Wed, 18 Dec 1996, at 14:44:00, Saida cajoled electrons into this

People work hard and make many sacrifices to earn their PhDs. Why a person like Katherine Griffis feels she has the right to circumvent all this and simply pluck a degree out of Cracker Jack box in order to lend herself some sort of cachet in a science-oriented newsgroup, is incomprehensible to me.

Saida

I feel it is perhaps time for you to stop making such a fool of yourself.

Since your contention seems to be based around your assertion that Katherine has laid claim to a PhD in Egyptology, perhaps you would care to furnish us all with the evidence which you consider to be so incontrovertible. I'm sure that you would be able to find it within seconds if it exists. If it does not, or you cannot, then you would perhaps be best advised to cease this libellous petulance and offer up the public apology whilst there are still those here who find you mildly entertaining.

I, for one, am waiting for more than your raucous howling. There is a maxim in law which runs along the lines that a person is innocent until proven guilty. Since you have set yourself up as judge, jury and executioner, and furthermore have decided to drag your trial into the public domain, I should suggest that it is incumbent on you to now finish the evidence upon which you have based your condemnation.

Readers will doubtless draw their own conclusions as to your motivations and reliability should you fail to do so.

There is the challenge. Can you meet it?

I am waiting with interest.

Regards

Marc

Whatever you change your name to, you are still a shmuck. Why do you ask for the same evidence every day, only to come back with--"well, the dictionary says an Egyptologist is anyone who studies Egyptology". Right! People knock themselves out for years trying to earn their PhD's. Why

should they trouble themselves? They could get their degrees from a box of Cracker Jacks like Griffis did and still have themselves listed, as she has done, with all the greats of the science. You, yourself, have already admitted Griffis is no Egyptologist. So what are you going on about? What is all this to you? Why should you be angry with me for saying what you already know to be the truth? Besides, when I wrote that perhaps the Hab got his ideas from his "phoney Egyptologist" friends, you wrote me at once asking if it was you I meant! Why was that? Are you, also, falsely claiming to be involved with archaeology? Why should you be uneasy? This is about the third time I have given you this information. Why don't you accept it and shut the hell up!:Email addresses of Egyptologists (Nigel Strudwick's Egypt Pages from Cambridge University) 4 December 1996

This file contains ethereal addresses of Egyptologists (graduate students and professionals) known to us, in a format that can be sorted by last name. We do not know all the people personally, and some may not really be Egyptologists. (many names snipped)

British Museum, London
egypt@british-museum. ac.uk
Departmental address for Egyptian Antiquities
Egyptologists include Carol Andrews, Morris Bierbrier, Vivian Davies,
Richard Parkinson, Stephen Quirke, Jeffrey Spencer,
John Taylor, Derek Welsby
Brooklyn Museum see note above

Dodson, Aidan; London
100761.3075@compuserve.com
Dorman, Peter; University of Chicago
peter_dorman@memphis-orinst.uchicago.edu

Griffith Institute, University of Oxford
griffox@ashmus.ox.ac.uk

(see also McKay, Magee, Malek, Miles) or: griffox@vax.ox.ac.uk Griffis (Greenberg), Katherine; Univ. Alabama grifcon@usa.pipeline.com Guksch, Heike; Heidelberg University
b13@ix.urz.uni-heidelberg.de

There she is, right up there with some of the foremost Egyptologist in the world, supposedly at the University of Alabama (except her e-mail address, as you know, has nothing to do with any university). Then, here she comes again--on the Centre for Computer Aided Egyptological Research list of Egyptologist:

<snipped for brevity - KG>

Prof Dr. Peter F. Dorman, 5715 S. Kenwood Avenue, Apt. 3-N; Chicago, IL 60637
(snip)

rof. Dr. Hans Goedicke, The J.Hopkins Univ., Dept. NE Studies, Charles and 34th

Street, Baltimore, Maryland 21218

Prof. Dr. Ogden Goelet, 240 East 27th Street, Apt. 25F, New York, NY 10016

Katherine Griffis (Greenberg) University of Alabama at Birmingham
P.O. Box 43159, Birmingham, AL 35243-0159 [Voice: 205/995-2099; Fax; 205/995-2099 (Enter *77*, press SEND) or 205/991-0304; e-mail: grifcon@usa.pipeline.com OR

grifcon@ix.netcom.com]

Mrs. Emma Swan Hall, 1080 Fifth Avenue, New York, NY 10028

Ms. Joyce Haynes, 86 Wilson Road, Nahant, MA 01098

Ms. Marsha Hill, c/o M M A, Dept. of Egyptian Art, 1000 Fifth Avenue, New York, NY

Subject: Statement from UAB Special Studies (WAS Re: Phoney Egyptologists)
From: AYA@CEC.conteduc.uab.eduDate: 1996/12/23
Message-ID: <851367777.19486@dejanews.com>
References: <32B6FF92.6D 12@PioneerPlanet.infi.net> <32BC0116.5010@PioneerPlanet.infi.net>
To: gifcon@mindspring.com,celm010@uabdpo.dpo.uab.edu,dweller@ramtops.demon.co.uk
X-Http-User-Agent: Mozilla/1.1N (Windows; I; 16bit)
X-Originating-Ip-Addr: 138.26.90.200 ()
Organization: Deja News Usenet Posting Service
X-Article-Creation-Date: Mon Dee 23 19:11:18 1996 GMT
X-Authenticated-Sender: AYA@CEC.conteduc.uab.edu
Newsgroups: sci.archaeology,soc.culture.egyptian,alt.culture.egyptian,alt.archaeology

In article <332BC0116.5010@PioneerPlanet.infi.net>, Saida <saida@PioneerPlanet.infi.net > wrote:

<snipped>

This communication is to verify that Katherine Griffis has taught non-credit courses in ancient Egyptian history and culture since 1980 at UAB Special Studies. On one occasion, this course was taught in conjunction with the Birmingham Festival of Arts/Birmingham Museum of Art which was honoring Egypt. I served as Dean of UAB Special Studies at the time she taught this, and other subjects, for the non-credit community programs at UAB.

Sincerely,

Sara Ruiz de Molina
Dean
UAB Special Studies
University of Alabama at Birmingham

----------====Posted via Deja News====----------
http://www.dejanews.com/ Search, Read, Post to Usenet

Subject: Re: Armageddon (Was The End of the World As We Newt)
From: grifcon**@mindspring.com (Katherine Griffis)
Date: 1997/03/28
Message-ID: <333bf9fe.75025215@news.mindspring.com>
References:
<19970328154101.KAA28397@ladder01.news.aol.com>
X-Server-Date: 28 Mar 1997 17:48:53 GMT
Organization: GRIFFIS CONSULTING
Reply-To: grifcon**@mindspring.com
Newsgroups: sci.archaeology,alt.archaeology

I am only going to make *one* public statement about this matter on Usenet, as I am tired of this whole matter.

ariwyler@aol.com (AriWyler) wrote:

I wrote to Saida. This morning she told me that she had never had any quarrel with any of the people who seem to dislike her so intensely, but that a woman named Griffis had written her some nasty private e-mails describing how some of the people she thought were her friends weren't and that they were showing Saida's letters to them to her and snickering over them with her. Saida feels that the sole problem was that Griffis considered herself the "reigning queen of Egyptology" on the sci.arch and didn't appreciate the competition Saida represented. Saida says that she never resented Griffis and liked her quite well before these private e-mails began. In fact, she claims she liked Xina and Marc Line, too. However, at some point, they incited the whole newsgroup against her and she doesn't feel welcome to post here any longer.

Saida had queried me private about one month ago about a third party, whom I shall not name, and inquired about rather *personal issues* about them. I told her that I was not privy to such information, and should she wish to know these things, she should take it up with *that individual*. Her

retort to me was, in the least, sharp and at that point, we no longer corresponded privately.

The letter that she posted to Usenet of mine was a letter that *I* sent in response to this post by Saida:

Subject: Re: A question to Marc Line...
From: Saida <saida@PioneerPlanet.infi.net>
Date: 1996/12/17
Message-Id: <32B6B064.5891@PioneerPlanet.infi.net>
References:
<32A4C83C.7F9A@best.com><be7sfAAvrUpyEwbh
@bosagate.demon.co.uk><591u6f$348@news.inforamp.net>
<0jL3QQA8AZtyEwMs@bosagate.demon.co.uk>
<32BSBFF9.661 PioneerPlanet.infi.net> <32B5CE95.1A7E
@netins.net> <32B5D873.4A4B@PioneerPlanet
infi.net><59562i$ssl@camel10.mindspring.com>
Content-Type: text/plain; charset=us-AsciiOrganization:
InfiNetMime-Version: 1.0
Newsgroups:
sci.archaeology,alt.archaeology,soc.culture.egyptian,
alt.culture.egyptian
X-Mailer: Mozilla 2.02 (Win95; U)

Katherine Griffis wrote:

> Saida <saida@PioneerPlanet.infi.net> wrote >

>>Xina wrote:> > >

(a big snip)

The truth is only good for those who want to believe it. Indeed. And until we find out without a shadow of a doubt what that "truth" is, it really is a moot point. Modern day racial dividing lines need not apply. It seems rather odd that those the most concerned over the race of the Ancient Egyptians, just so happen to be Americans.

TO which Saida replied:

Xina, there is absolutely nothing odd about it whatsoever. There is not one Egyptologist in America disinterested in the matter to which you refer. Why should they be? You seem to infer that there is something wrong with wanting to know who the ancient Egyptians were. How can that be? This is all part and parcel of the science of Egyptology. Not being Elijah, I am not inclined to get into a protracted argument with you, but I have to tell you that the ability to discern race, to some degree, from blood, is around the corner if not already here.

To which I replied:

I think that you misinterpret the issues of Egyptology, Saida, if you think that it is of primary interest as to what "race" the Egyptians were.

<Saida>
"Primary" is your word, not mine.

It is NOT a primary concern to anyone that *I* am aware of in the field,

<Saida>
You are not in a position to know. You are not an Egyptologist.

but that the issue has been blown out of proportion by both Afrocentrist and Eurocentrist thought (better called Americentrist, as Miguel pointed out on sci.arch some months ago). Having just spent a better part of the month with several European and Canadian Egyptologists, I can say, with some certainty, that they find this whole issue somewhat confusing and *definitely* not an issue that **they** are and will be concerned with.

<Saida>

Tell that to Dr. Rosalie David of Manchester University. Also, did you happen to read the issue of Archaeology (Sept./Oct.) dedicated to the study of DNA? Did you happen to see the article "The Great DNA Hunt--Genetic archaeology zeroes in on the origins of modern human."? Did you see the article by Prof. Scott Woodward? Hire is an e-mail I received from him a while back:

Organization: Brigham Young University
To: Saida <saida@PioneerPlanet.infi.net>

Dear Saida,
We do have enough information that we will probably publish within the next couple of months concerning the mitochondrial DNA of some of the 18th and 19th Dynasties. We do not yet have a complete sampling of all of the available mummies but do have an interesting group at the beginning of the 18th and surrounding Rameses II in the 19th. Concerning the ethnic origins of the rulers of the dynasties. One of the things that we are trying to do is to determine just what exactly is an Egyptian. It well may be that an Egyptian was a very mixed and cosmopolitan group. Egypt has always been a place of refuge from famines and other natural disasters. Peoples from a wide area have always moved into the Nile valley. There is probably a good chance that we will find a wide mix of people in the genealogies of ancient Egypt. I will keep you informed as soon as the paper is accepted for publication. (end of letter)

I can't imagine which "Egyptologists" you were talking to. Perhaps they had the same credentials as yourself.

If the American line of thought to *you* seems predisposed to it, it is primarily in response to allegations made by the

Afrocentrist scholarship, which is a uniquely American phenomenon.

<Saida>
Nonsense! Afrocentrist "scholarship" has nothing to do with any of the studies now going on.

When I stated earlier that the US Census defined term "white" was not properly used in talking about Egyptians of ancient times, you came back with the term "Caucasoid" as a reference to a group of people, and equating them as the same. This is fairly vague as a "racial" designation, as in speaking of remains, the term "caucasoid" refers primarily to bone and physical characteristics of groups of people who came (possibly) from a certain location (the Caucasus Mtns), and NOT to any *detailed* and definite "race" of people

<Saida>

Wrong again. My dictionary says this: "designating one of the main ethnic divisions of the human race; it includes Mediterranean, Alpine and Nordic subdivisions and is loosely called the white race. When was the last time you heard somebody say, :I am a Caucasian--I come from the Caucasus Mountains?

Race, as far as Egyptology has been concerned, is a term of **modern** socio-political importance,

<Saida>
I thought you just said that it has no importance whatsoever. The above statement is false.

and not one of concern BY the ancient Egyptians (and likely the modern ones as well), who were know for their ability to assimilate peoples,

<Saida>

The ancient Egyptians are concerned about nothing. They are long dead. As for the modern Egyptians, their ability to "assimilate peoples" has its limits, too. Or have you forgotten all the persons who were forced to leave Egypt during the Nasser era?

and yes, this includes the Nubian groups you refer to earlier. The "fighting" refer to is an ancient tussle over the use of the waterways and trade routes between the ancient Egyptians and Nubians, and I sincerely doubt (as would Bruce Williams, Lanny Bell, Donald Redford, among others), that it was based upon any so-called "racial hatred" of peoples, as you have somewhat implied, from what I have seen of your most recent posts

<Saida>
I have implied nothing of the sort. Show me where I have said any such things. And don't ever try to associate me with "racial hatred". I have no interest in this topic.

Further, you make reference in another post to Shaw and Nicholson's definition within "The Dictionary of Ancient Egypt" wherein they recount the **various theories** of where the ancient Egyptians have been theorized as coming from. Please note that this definition does NOT (repeat: NOT) say anything definitive as to any sort of "race" of the ancient Egyptians, but discusses merely the various theories that have been postulated over the many years of Egyptology, i.e. from the 19th century CE onward. The so-called "dynastic race" theory of Emery, BTW, was disproved by Egyptologists in the early 1960's, and has not been considered a *valid theory* for many years.

<Saida>
Well, at least you have read my quote from the "Dictionary correctly.

So, if you have *YOUR* theories as to your origin of the Egyptians, fine. But I find little evidence within your posts that reflect much of the *real* issues that concern Egyptologists,

<Saida>
Again, how would you know the *real* issues that concern Egyptologists? The airs you give yourself are really quite ludicrous, Katherine.

as they work to fit together the puzzles of what is *still* not known about the ancient Egyptian culture and history, as in detailed timelines, etc.... the question of "ethnicity/race/color" is of little or no importance to the professionals *I* am talking to.

<Saida>
"Ethnicity, race, color" all in one breath, eh? Why don't you just stick with ethnicity as it refers to groups who might have settled in the Nile Valley. I think Egyptologists are quite sufficiently interested in those.

Regards --
Katherine Griffis (Greenberg)
Member of the American Research Center in Egypt

<Saida>
In case anyone believes otherwise, the ARCS is an organization anyone can join without having any particular knowledge of Egypt whatsoever.

University of Alabama at Birmingham Special Studies

<Saida>
What are "Special Studies" and what have you to do with them?

Now, for the record, I am an instructor with the University of Alabama at Birmingham, Department of Special Studies, and have been for over 17 years. I have told this much to her, but felt that after such an insulting post I owed her little else. Saida's comments in this area are based upon some mistaken notion she has that I am not what I have said that I am. Here's what I am: I am a "historian of ancient Egyptian culture and history" who teaches coursework with the University of Alabama Department of Special Studies. We teach adults, in professional and academic matters. My lecture series in "Through Egyptian Eyes* has been taught, periodically since 1980, at the University and continues to be so taught from time to time.

I have been a member of the American Research Center in Egypt for a number of years, as well as the Oriental Institute, and recently joined the International Association of Egyptologists. In all situations, I have made it quite clear that I have a degree in history, and that I have studied Egyptology issues for over thirty years, For that. and my experience in consulting with museums and educational organizations, as well as field experience in Egypt, I am employed for that knowledge and experience. I have further degrees and skills, but that is NOT relevant to this discussion.

In the case of the lists that I appear on on the WWW, I have made these credentials known to all list-owners with the statement that "should this NOT meet you list inclusion criteria do not include my name". Thus far, I have been included on the lists that seem to irritate Saida so.

Deja News seems to bear out what Saida told me. She was wrong to publish the private e-mail from Griffis on the sci.arch but what Griffis wrote to Saida was very petty and intended to be hurtful. The dates show that only after that Saida started accusing Griffis of being a bogus Egyptologist. After that, it seems to me Ms. Griffis had only to tell the group where she had studied Egyptology and what her

degree was, but, for some reason, she never did this. I am sorry to say that Xina and Marc went a little berserk on this subject. Just why was difficult for me to tell from their posts. Ms. Griffis is still listed with the Egyptologists of the world, just as Saida claimed, but her actual credentials never came out in the entire battle. Anyway, for our purposes, let her be an Egyptologist.

Fine, but understand that *I* posted the e-mail to her based upon an attack upon MY professional credentials, and that, I find, was intolerable. She made clear and obvious attempts to discredit me, in response to that e-mail, and the responses to that attack made by not only Marc, Xina AND others was in response to her unwarranted allegations in this area. Eventually, this was posted by my employer, the University of Alabama at Birmingham (who does not have Usenet access, so posted to DejaNews), although I note you make no reference to it:

Subject: Statement from UAB Special Studies (WAS Re: Phoney Egyptologists)
From: AYA@CEC.conteduc.uab.edu
Date: 1996/12/23
Message-Id: <851367777.19486@dejanews.com>
References: <32B6FF92.6D12 @PioneerPlanet.infi.net>
<32BC0116.5010@PioneerPlanet.infi.net>
X-Http-User-Agent: Mozilla/1.IN (Windows; I; 16bit)
X-Originating-Ip-Addr: 138.26.90.200 ()
Organization: Deja News Usenet Posting Service
X-Article-Creation-Date: Mon Dec 23 19:11:18 1996 GMT
X-Authenticated-Sender: AYA@CEC.conteduc .uab.edu
Newsgroups:
sci.archaeology,soc.culture.egyptian,alt.culture.egyptian,alt.a
rchaeology

In article <32BC0116.5010@PioneerPlanet.infi net>,
Saida <saida@PioneerPlanet.infi.net> wrote:<snipped>

This communication is to verify that Katherine Griffis has taught non-credit courses in ancient Egyptian history and culture since 1980 at UAB Special Studies. On one occasion, this course was taught in conjunction with the Birmingham Festival of Arts/Birmingham Museum of Art which was honoring Egypt. I served as Dean of UAB Special Studies at the time she taught this, and other subjects, for the non-credit community programs at UAB.

Sincerely,
Sara Ruiz de Molina
Dean UAB Special Studies
University of Alabama at Birmingham

----------====Posted via Deja News====----------
http://www.dejanews.com/ Search, Read, Post to Usenet

Now, from this *I* never received a note, statement, or apology from Saida in this matter. Whether she believes I have credentials in this matter is now irrelevant: however, her continued attacks upon people such as Marc and Xina indicate that she smarts from their demands that she produce evidence that I had none. She also never produced that, except for a rather odd reading of the disclaimer of Nigel Strudwick's list at Cambridge.

So, IMO, this present set of snipes is a continuation of that diatribe that *she* began, not so much in response to Egyptological issues, I believe, but based upon the previous statement of private e-mails that I would not give her the personal information on a third party she desired. I have no intent of posting these letters to Usenet as it was a private matter altogether.

Her "smoke-screening" of the Egyptological issues is another matter, as she had contacted my University some *3 weeks*

prior to the above post attacking my credentials and never bothered to talk to anyone beyond the receptionist level. The University is now aware of her, and has taken steps to answer *any questions* about my association with them should anyone care to ask, by calling 205/934-7451 (Ask, for the Dean, Dr. Sara Ruiz DeMolina).

It is my hope that this sets the full matter out for the readers of sa and aa, and I will have NO further statement in this matter

Regards --
Katherine Griffis (Greenberg)
Member of the American Research Center in Egypt
University of Alabama at Birmingham Special Studies
http://www.ccer. ggl.run.nl/ccer/PEOPLE2.HTML

<remove asterisks in address when replying to me personally>

Reading mail from me in a Usenet group does not grant you the right to send me unsolicited commercial e-mail. All senders of unsolicited commercial e-mail will be reported to their postmasters as Usenet abusers.

GESPASS & JOHNSON

Kathleen M. Johnson

Also Admitted in:
Washington, D.C.
Pennsylvania
E-Mail: kmjx@aol.com

3600 Clairmont Avenue
Birmingham, Alabama 35222
Phone: 205-323-5966
Fax: 205-323-5962

David Gespass

Reply to:
P.O. Box 550242
Birmingham, Alabama 35255
E-Mail: thepass@aol.com

May 20, 1997

Ms. Marianne Luban
1322 Alton Avenue
Suite 103
St. Paul, Minnesota

RE: Katherine Griffis

Dear Ms. Luban:

Ms. Griffis has contacted this office following an extended period of trying to put a stop to your periodic attacks on her character and professional reputation. Indeed, she has been extremely reluctant to take such a step and has, in the past, not responded to several of your comments in hopes that they would come to an end. Unfortunately, that has not been the case.

Most recently, you have accused her of dishonesty including falsification of her professional qualifications, and made accusations that her consulting business is nonexistent. You have also referred to her as a "liar" and "phoney."

Because of the seriousness of your most recent accusations, their falsity and the fact that they directly impugn her professional reputation, thus threatening her business, she has no choice but to respond. It is clear that you made these accusations in reckless disregard of the truth, without any factual basis and with malice. Demand is hereby made that you refrain in the future from attacking Ms. Griffis publicly, that you retract your false allegations and

disseminate the retraction as widely as you disseminated the original statements. We have no desire to litigate this matter but will do so if necessary in order to protect Ms. Griffis' reputation and career. I hope and trust that this will not be necessary and that no further incidents will ensue.

Yours truly,

/s/
David Gespass

DG/saw

pc: Katherine Griffis

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Court File No. C1-98-4573

Katherine Griffis,

Plaintiffs,

AMENDED
ORDER ON A MOTION FOR
AMENDED FINDINGS

-vs-

Marianne Luban,

Defendant.

The above-entitled matter came on for hearing before the Honorable Manuel J. Cervantes, Referee of District Court on June 16, 1998, upon the motion of defendant to vacate an Alabama default judgment on grounds that it was entered in violation of defendant's rights of due process. The court granted the motion, it's order being filed on August 31, 1958.

On September 25, plaintiff moved the court for an amendment and stay of the August 31 order. The record closed on October 15, 1998.

C. Peter Erlinder, Esq. and Ralph J. Overholt, Esq. appeared on behalf of plaintiff, Defendant was represented by Michael Perlman, Esq.

Based upon all the files, records and proceedings herein, the Court having heard the arguments of counsel and being fully advised in the premises makes the following:

FINDINGS OF FACT

1. Plaintiff, a resident of Jefferson County, Alabama and defendant, a resident of Ramsey County, Minnesota are both frequent users of the Internet.

2. Between December 1996 and June 1998, defendant posted approximately 100 messages of a derogatory nature towards the plaintiff.

3. Defendant has never been to Alabama. She conducted no business nor solicited business from Alabama residents. Defendant's only contact with Alabama has been via Internet postings to a newsgroup accessible by anyone connected to the Internet, including Alabama residents, except for at least one telephone call to plaintiff's employer, the University of Alabama at Birmingham, to inquire about plaintiff's employment status. The content of the relevant Internet postings are as follows:

A. Prior to April 25, 1998 plaintiff responded to defendant's attacks on her personal credentials by verifying her employment at the University of Alabama, her J.D. degree from the University of Birmingham (Alabama) and referring to her consulting business in Alabama.

B. The Internet posting of April 25, 1996 indicates that defendant knew that plaintiff was "from the great state of Alabama". (Pl. ex.A)

C. The Internet posting of December 12, 1996 indicates defendant was aware of plaintiff's employment with the University of Alabama. (Pl. ex.B).

D. In response to defendant's allegations, plaintiff's employer, the University of Alabama Birmingham posted verification of plaintiff's employment with that institution, thus indicating that defendant's postings were reaching Alabama, (P. ex.C) and were having an effect on plaintiff's professional standing in Alabama.

E. The March 28, 1997 posting includes defendant's reference to plaintiff's employment at the University of Alabama Special Studies Department, (PL. ex.D, p.5); plaintiff's response responding to defendant's allegations

with specific reference to plaintiff's employment in Alabama; (ex. D, p.6); reposting of the University of Alabama's response to defendant's attacks on plaintiff's credentials. (ex.D, p.7).

F. Defendant received actual notice that her statements were harming plaintiff in a letter from plaintiff's counsel dated May 20, 1997 (Pl. ex.E).

G. Defendant does not deny that she was aware that plaintiff resides in Alabama, that plaintiff is employed in Alabama; that she called plaintiff's employer in Alabama to question plaintiff's professional standing in Alabama and that her Internet postings were being distributed in Alabama.

4. In September, 1997 plaintiff filed a civil lawsuit in an Alabama state court for defamation. The lawsuit alleged that defendant had defamed her on the Internet by posting messages, i.e. that plaintiff was not on the faculty of the University of Alabama, was not a graduate of Birmingham School of Law, and was not an accredited Egyptologist.

5. In her state court action, plaintiff sought injunctive relief and monetary damages.

6. Service of the Alabama lawsuit was by certified mail to the defendant in October, 1997. Plaintiff asserts that this mailing constitutes good and proper service under Alabama law, defendant does not dispute that she was served by certified mail and does not challenge the propriety of the method of service.

7. Defendant did not appear and in January, 1998, plaintiff obtained a default judgment in the amount of $25,000 plus injunctive relief.

8. In May, 1998, plaintiff caused the foreign judgment to be docketed in Ramsey County as a Minnesota judgment.

9. Defendant moves the court to vacate the Alabama judgment on the ground that defendant's due process rights were violated by the entry of that judgment.

CONCLUSIONS OF LAW

1. Whether the court can exercise personal jurisdiction over defendant requires a two-prong analysis. First, the court examines whether personal jurisdiction exists under Alabama's long-arm statute. Alabama's long-arm statute permits the exercise of jurisdiction to the extent due process allows. This is not contested by the defendant.

2. Second, and the issue in this defamation case, the court must determine whether personal jurisdiction comports with the Due Process Clause of the Fourteenth Amendment for defamation cases, under the "effects" test as set forth by the United States Supreme Court in **Calder v. Jones**, 465 U.S. 783 (1984).

3. The burden is on plaintiff to show that defendant had "minimum contacts" with Alabama "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." **Humphrey v. Granite Gate Resorts, Inc.** 568 N.W.2d 715 (quoting **Milliken v. Meyer**, 311 U.S. 463 (1940). In meeting that burden, plaintiff is entitled to have the facts evaluated in the light most favorable to the party claiming the existence of jurisdiction, or to have a contested hearing before the court. **Dakota Industries v. Dakota Sportswear, Inc.**, 946 F.2d 1384 (8th Cir.1991).

4. "There must be some act by which the defendant purposely avails [herself] of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. **Humphrey**, supra, (quoting **Hanson v. Denckla**, 357 U.S. 235 (1958). In a defamation case, the act consists of intentionally creating an allegedly defamatory message that is directed toward the forum state, and that will have its "effects" in the forum state. **Calder v. Jones**, supra.

5. Plaintiff has cited several instances in which defendant either specifically referred to her location in Alabama or was notified that her writings were having "effects" in Alabama. The defendant has never denied that

she knew that plaintiff was located in Alabama and that her allegedly defamatory messages would "effect" plaintiff's professional career in that state. Taken in the light most favorable to the plaintiff, as required by **Dakota v. Dakota**, supra, these facts establish that the **Calder v. Jones** "effects" test has been met with plaintiff's unrebutted prima facie showing that defendant was aware that her allegedly defamatory postings were having an "effect" in Alabama.

6. To permit personal jurisdiction in this case follows the "effects" test established by the Supreme Court for defamation cases in **Calder v. Jones**, supra.

7. Based upon the rulings of the Supreme Court of the United States and the Eighth Circuit Court of Appeals, plaintiff had personal jurisdiction over defendant for purposes of bringing a claim of defamation in Alabama.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The judgment docketed on May 7, 1998 in Ramsey County
is affirmed under the Full Faith and Credit Clause and the Uniform Enforcement of Judgments Act.

2. The costs and disbursements shall be borne by the party opposing personal jurisdiction.

3. Copies served by first class U.S. mail upon counsel shall be considered due and proper service for all purposes.

/s/
Manuel J. Cervantes
Referee District Court

Dated: 2/10/99

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: Other

Katherine Griffis,
Plaintiff,

Court File No. C1-98-4573

v.

NOTICE OF MOTION AND MOTION

Marianne Luban,
Defendant.

TO: Katherine Griffis, the above named Plaintiff, and to Ralph Overholt, P.O. Box 5331, Hopkins, MN 55343, her attorney:

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the defendant will bring the above Motion on for hearing before the Honorable Lawrence Cohen, in Chamber 1230, Ramsey County Courthouse, 15 West Kellogg Blvd., St. Paul, MN 55102, on the 15th day of May, 2000, at 3:00 p.m., or as soon thereafter as counsel can be heard.

MOTION

Defendant moves the Court for an Order as follows:

1. Vacating the foreign judgment from Jefferson County, Alabama, on the following grounds:
   a. The judgment is void;
   b. The judgment violates due process under the United States and Minnesota Constitutions;
   c. The judgment is not entitled to full faith and credit;

d. The state court of Alabama does not and did not have jurisdiction over the defendant.

2. Granting to the defendant her costs and disbursements incurred in this action, including reasonable attorney fees.
3. For such other and further relief as to the Court may seem just and equitable.

Said motion will be made on affidavit, on all the files, records, and proceedings herein, and on the laws of the State of Minnesota.

Dated: March 21, 2000

By /s/_____
Marianne Luban
1532 Randolph Ave.
St. Paul, MN 55105
pro se

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Katherine Griffis,

Plaintiff,

vs.

ORDER AND MEMORANDUM

Marianne Luban,

Defendant.

The above-entitled matter came duly on for hearing before the Honorable Lawrence D. Cohen, Judge of District Court on July 26, 2000. Ralph J. Overholt, Esq., appeared on behalf of Plaintiff Katherine Griffis; Marianne Luban appeared pro se.

The matter is before the Court upon Defendant's motion for issuance of an order to show cause; motion for an order compelling discovery, and for sanctions. Also before the Court is Plaintiff's motion for injunctive relief.

The Court has reviewed the respective motions of the parties, has carefully reviewed all memoranda submitted, as well as oral arguments which were presented. Now, therefore, upon all of the files, records and proceedings herein, IT IS HEREBY ORDERED:

1. Defendant Marianne Luban's motion for issuance of an order to show cause is in all things denied.

2: Defendant's motion for an order compelling discovery is herein denied.

3. Defendant's motion for sanctions is denied.

4. Defendant Marianne Luban shall pay to Plaintiff's counsel Five Hundred and No/100 Dollars ($500.00) within thirty (30) days of the date of this Order for fees and costs

incurred in defending the motions above stated. Judgment shall be entered forthwith if payment is not made accordingly.

5. Plaintiff Katherine Griffis' motion for injunctive relief is granted in all respects.

6. Defendant Marianne Luban's motion to vacate the foreign judgment herein is denied.

Let judgment be entered accordingly.

The attached Memorandum is made part of this Order

/s/
Lawrence D. Cohen
Chief Judge

Dated at St. Paul, Minnesota,

this 13th day of December, 2000.

MEMORANDUM

This Court concludes that it must give full faith and credit to Alabama's injunction against Defendant in the State of Minnesota. Alabama's long-arm statute permits the exercise of personal jurisdiction over the Defendant without harm to the Defendant's due process rights.

A default judgment was filed against the Defendant in the State of Alabama on May 5, 1998. In an effort to vacate the judgment, the Defendant brought the above-entitled matter before the Honorable Manuel Cervantes, a Referee of District Court, on June 16, 1998. Referee Cervantes first granted the motion to vacate, which was filed on August 31, 1998. However, this order was amended and the Alabama judgment was affirmed on March 18, 1999. At that time the Defendant filed a notice of appeal to the Minnesota Court of Appeals.

On November 15, 1999, the Court of Appeals ordered that the judgment should be vacated because the Referee's

orders were not co-signed by a District Court Judge. Griffis v. Luban, 601 N.W. 2d, 712.

On May 15, 2000, the parties appeared before this Court on various cross-motions. Plaintiff Griffis moved for injunctive relief; Defendant Luban moved to vacate the foreign judgment against her, along with defense motions for an issuance of an order to show cause, for an order compelling discovery, and sanctions. On July 26, 2000 this court ruled from the bench in favor of Plaintiff. Thereafter, further communications were received from Defendant Luban, with copies to counsel, under the dates of August 29, 2000, and September 28, 2000, dealing with issues to be resolved in the Federal Bankruptcy Court. Defendant, in her August 29, 2000, communication requested the court to "hold off' issuing an order in the instant matter. Under the date of September 29, 2000, the Honorable Dennis D. O'Brien, United States Bankruptcy Judge, notified this court of a scheduling conference in Bky. No. 99-36147.

Under Alabama's long-arm statute, Alabama has jurisdiction over a party to the extent allowed by due process. However, when personal jurisdiction is at issue in a defamation case, the Court must determine whether personal jurisdiction is permissible under the due process clause of the Fourteenth Amendment of the United States Constitution.

The applicable, "effects" test for personal jurisdiction in defamation cases was set forth by the United States Supreme Court in Calder v. Jones, 465 U.S. 783, 104, S. Ct. 1482 (1984). The Court held in that case that even a single publication by defendant is enough for personal jurisdiction over that defendant if the defendant knew that the allegedly defamatory publication would cause injury to the plaintiff in the forum state.

To apply the "effects" test, the plaintiff must show that: (1) The defendant committed an intentional tort; (2) The forum state was the focal point of the plaintiff's injury; (3A-11) the defendants knew that the tortious act was aimed at the forum state. Imo Industries, Inc., v. Kiekert AG, 155 F.3d. 254, 265, U.S. App. LEXIS 21550, *35 (1998).

First, Defendant's action in the instant case constituted defamation according to the Alabama judgment. Second, Alabama was the specific location of Plaintiff's injury, as Plaintiff cited several examples where the Defendant either referred to Plaintiff's location in Alabama or was notified that her writings were having "effects" in Alabama. Third, the Defendant never denied that she knew Plaintiff was located in Alabama, and that her allegedly defamatory messages would have an "effect" on Plaintiff's professional career in Alabama.

These facts evaluated in the light most favorable to the party claiming existence of jurisdiction showed that the Defendant was aware that her allegedly defamatory postings were having an "effect" in Alabama. Dakota Industries v. Dakota Sportswear, Inc., 946 F. 2d, 1384, 1387 (8th Cir., 1991).

The injunction issued in Alabama against the Defendant is valid in Minnesota. This Court has determined that Minnesota must give full faith and credit to Alabama's judgment because Alabama correctly had personal jurisdiction over the Defendant.

In light of this Court's ruling, no further, analysis is required concerning Defendant's motion for discovery.

LDC

LDC/dl

62-C1-98-004573 Foreign Judgment Date filed: 05/05/1998
KATHERINE GRIFFIS VS MARIANNE LUBAN
(JUDGMENTS ORIGINALLY ENTERED IN JEFFERSON COUNTY, ALABAMA) ***COHEN***

Date	Activity	Start/End	Judge	CrtRm Intrp Chgs Cont SrvcDate
05/05/98	Case Filed	10:55 10:55		
	1) $132.00 CERTIFICATE OF JUDGMENT W/ATACHED CERTIFICATE & COPY OF INJUNCTION FROM JEFERSON COUNTY ALABAMA FILED			RC
05/05/98	Doc. Filed	11:06		
	2) CASE ACTON SUMMARY OF DEFAULT JUDGMENT W/ATTACHED CERTIFICATE OF JUDGMENT FROM JEFFERSON COUNTY ALABAMA FILED			RC
05/05/98	Affidavit	11:07		
	3)AFFIDAVIT OF IDENTIFICATION OF JUDGMENT CREDITOR AND DEBTOR FILED			RC
05/05/98	Entry Judg	11:10		
	JUDGMENT ENTERED IN FAVOR OF PLN & AGAINST DFD, MARIANNE LUBAN, IN THE AMOUNT OF $25,000.00 FILED			RC
	4) NOTICE OF ENTRY OF JUDGMENT;NOTICES MAILED TO PARTIES			RC
	11:10			
05/28/98	Motion Fld	12:46		
	5) $132 DFD'S NOTICE MOTION/MOTION W/SERV.			
	6) AFF MARIANNE LUBAN			
	7) DFD'S MEMORANDUM			FILED LC
05/28/98	Clerical	01:15		

JUDGMENT DOCKETED IN FAVOR OF PLN & AGAINST DFD, MARIANNE LUBAN, IN THE AMOUNT OF $25,000.00 RC

8) NOTICE OF DOCKETED OF JUDG;NOTICES MAILED TO PARTIES RC

05/28/98 Docket Not 01:16

06/09/98 Doc. Filed 09:04

9) PLN' S MEMQ IN OPP TO MOT TO VACATE MP

10) CERTIFICATE OF REPRRESENTATION & PARTIES. MP

06/09/98 Clerical 09:05

ATTORNEY FAX COPY OF AFF OF KATHERINE GRIFFIS W/EXH. A-F. MP

06/16/98 Hearing 03:45 M Cervantes 1640

MOT VACATE FOREIGN JDG - MICHAEL PERLMAN (DFD ATTY) 591-9444 ATTY FOR BOTH PARTIES PRESENT (ERLINDER & OVERHOLT -PLN) UNDER ADVISEMENT-ATTYS 2 WKS TO SUBMITT DOCUMENTS. NJP

06/17/98 Clerical 08:38

PENDING. NJP

06/30/98 Submitted 10:52 M Cervantes

ATTN: MMJ -ATTYS TO SUB DOCS?? CERVANTES 6/16-NEED TO CLOS**

08/31/98 Order 10:53

11. ORDER-JUDGMENT DOCKETED 5/7/98 IN RAMSEY COUNTY IS VACATED-REF.CERVANTES-8/26/98-COX

08/31/98 Adjudicate 10:53 M Cervantes

UA-HEARING OF 6/16/98

09/02/98 Doc. Filed 09:59

12. NOTICE OF FILING OF ORDER W/SERV.-COX

09/18/98 Motion Fld 04:21

13) PLNS MOT TO SET ASIDE REPORT PURSUANT TO RULE 53.05 & STAY OF ORDER & NOTICE OF MOT. (HRG FOR RVW OF REF'S

DECISION WILL NOT BE SET PER MMJ'S CONVERSATION W/MR. ERLANDER. MP

09/25/98 Doc. Filed 09:45

14) PLN'S MEMO IN SUPPORT OF MOT FOR AMENDMENT. MP

15) PLN'S MOT FOR AMENDMENT & STAY OF ORDER & NOTICE OF MOTION.

12/12/98 Archive

01/08/99 Order 12:03

16 ORDER ON A MOTION FOR AMENDED FINDINGS-JUDGMT DOCKETED 5/7/98 IS AFFIRMED;REF.CERVANTES-COX

02/16/99 Doc. Filed 10:18

17) AMENDED MOTION TO AMEND FILED — MMJ

18) AMENDED ORDER ON A MOTION FOR AMENDED FINDINGS, CERVANTE REFEREE, FILED MMJ

Next_____FC__ 01 02 03 04 06 10

62-C1-98-004573 Foreign Judgment Date filed: 05/05/1998

KATHERINE GRIFFIS VS MARIANNE LUBAN (JUDGMENTS ORIGINALLY ENTERED IN JEFFERSON COUNTY, ALABAMA) ***COHEN***

Date	Activity	Start/End	Judge	CrtRm Intrp Chgs Cont SrvcDate
03/18/99	Entry Judg	09:08		
	19) PER ORDER ON MOTION FOR AMENDED FINDINGS DATED AND FILED JAN 8, 1999 AND AMENDED ORDER DATED FEB 10, 1999 AND FILED FEB 12,1999, JDGMT DOCKETED 5/7/1999 IS AFFIRMED			
03/18/99	Notice	09:08		
	20) NOTICE OF ENTRY OF JUDGMENT			MJ
03/18/99	Clerical	05:05		
05/07/99	Notice Apl	12:17		
	21) NOTICE OF APPEAL TO COURT OF APPEALS FILED BY DFD. APPEALING JDGMT OF MARCH 18, 1999.			MP
05/11/99	Doc. Filed	08:11		
	22) $500.00 COST BOND ON APPEAL.			
05/11/99	Doc. Filed	08:40		
	23) NOTICE OF CASE FILING FROM COURT OF APPEALS. APPELLATE COURT FILE # C8-99-762 HAS BEEN ASSIGNED.			MP
06/16/99	Doc. Filed	03:09		
	24) REQUEST FOR TRANSMITTAL OF FILE TO COURT OF APPEALS.			MP
06/18/99	Clerical	03:16		
	FILE AND CONTENTS SENT TO APPELLATE COURT ON 6-22-99.			MP
07/07/99	Doc. Filed	01:10		

25) SIGNED RECEIPT RETURNED FROM KIM BAKER, CLERK OF APPELLATE COURT. MP

09/15/99 Clerical 03:16

CO-COUNSEL FOR PLTF, PETER ERLINDER, CALLED WITH REQUEST FROM COURT OF APPEALS ASKING UNDER WHAT AUTHORITY WE SCHEDULED THE MOTION TO VACATE IN FRONT OF A REFEREE; I TOLD

09/15/99 Clerical 03:17

CONTD I TOLD HIM PER OUR 10/7/98 LIST TO BE HANDLED BY REFEREES OR JUDGES WHERE IT INDICATES MOTIONS TO VACATE; FAXED A COPY OF LIST TO PETER ERLINDER MMJ

11/15/99 Doc. Filed 11:47

25B) SYLLABUS, OPINION & DECISION FROM COURT OF APPEALS.
*******D.C. JUDGMENT IS VACATED PER ********
*******RANDOLPH W. PETERSON ******* MP

11/18/99 Doc. Filed 12:38

26) NOTICE TO REMOVE REFEREES W/AFF OF SERV. FILED RMB

12/13/99 Judge Assn 08:33 L Cohen

01/11/00 Clerical 08:47

SET APPEAL REVIEW DATE OUT TO 3-7-2000 MP

01/28/00 Clerical 03:16

FILE RETURNED FROM COURT OF APPEALS. MP

02/15/00 Entry Judg 01:00

27) JUDGMENT FROM COURT OF APPEALS ****
JDGMT DOCKETED ON MARCH 18, 1999
VACATED PER OPINION ********** MP

02/23/00 Entry Judg 08:35

28) PURSUANT TO COURT OF APPEALS JUDGMENT FILED 02/15/2000, ALL REFEREE'S ORDERS ARE VACATED; THEREBY RE-INSTATING ADMINISTRATIVE JUDGMENT ENTERED MAY 5, 1998 AND DOCKETED

02/23/00 Entry Judg 08:36
28 CONTD) ON MAY 28. 1999
NOTICE OF ENTRY OF JUDGMENT; NOTICES MAILED TO PARTIES MMJ

03/03/00 Doc. Filed 01:15
29) SUBSTITUTION OF ATTY: - DFD IS NOW PRO SE. FILED L

03/21/00 Doc. Filed 10:21
30) NOTICE OF MOTION AND MOTION.
FILED RMB
31) AFF OF MARIANNE LUBAN W/EXHIBITS.
FILED RMB
32) DFD'S MEMORANDUM W/EXHIBITS.
FILED RMS

04/13/00 Schdl Hrg 10:28
MOTION DATE, AND TIME ENTERED ON TCIS
MMJ

4/17/00 Doc. Filed 11:44
33) NOTICE OF MOTION W/AFF OF SERV.
FILED RMB
34) PLN'S MTN FOR INJUNCTIVE RELIEF THE ISSUANCE OF ORDER FOR OSC & ORDER HOLDING DFD IN CONTEMPT W/SERV. FILED RMB

Next_____FC-__ 01 02 03 04 06 10

STATE OF MINNESOTA
IN COURT OF APPEALS
C3-01-296

Katherine Griffis,
Respondent,

vs.

Marianne Luban,
Appellant.

Filed September 11, 2001
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. C1984573

Peter Erlinder, 566 Marshall Avenue, St. Paul, MN 55102 (admitted pro hac vice); and

Ralph Overholt, PO Box 5331, Hopkins, MN 55343 (for respondent)

John P. Borger, C. David Flower, Faegre & Benson, 2200 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402 (for appellant)

Considered and decided by Willis, Presiding Judge, Halbrooks, Judge, and Parker, Judge.*

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

SYLLABUS

1. A foreign court's judgment rendered without personal jurisdiction over the defendant is not entitled to full faith and credit in Minnesota. The Due Process Clause of the United States Constitution and the law of the foreign state as construed by the courts of that state are applied to determine whether the foreign court obtained personal jurisdiction.

2. Under constitutional and Alabama law, an individual is subjected to a foreign court's jurisdiction when he or she writes something with the knowledge that the writing will injure another in the foreign state. The individual must reasonably anticipate being haled into the foreign court to answer for the truth of the writing.

OPINION

HALBROOKS, Judge

Respondent Katherine Griffis obtained a default injunction in a defamation action against appellant Marianne Luban in Alabama and sought to enforce it in Minnesota. The district court found that Alabama's long-arm statute permitted the exercise of personal jurisdiction over appellant. The court, therefore, concluded that it must give full faith and credit to the Alabama decision. Appellant contends that she did not have minimum contacts with Alabama and was not constitutionally subject to personal jurisdiction there, and that the injunction issued by the Alabama court was inequitable and in violation of the First Amendment's prohibition against prior restraint. Because the district court properly found that Alabama could exercise personal jurisdiction over appellant, we affirm. But because the issue of whether the injunction violates the First Amendment was not addressed by the district court, we reach no conclusion on that issue.

FACTS

This case originally came before this court on the procedural issue of whether entering a judgment was illegal when it was based on a referee's decision without countersignature or review by a judge. *Griffis v. Luban*, 601 N.W.2d 712, 714 (Minn. App. 1999). Because this court vacated the judgment, it declined to reach the merits of the claim. *Id.* at 716.

Respondent Katherine Griffis is a resident of Alabama. She teaches noncredit courses in ancient Egyptian history and culture at the University of Alabama at Birmingham, and she is also a self-employed consultant on museums, international protocol, grant-development activities, and other matters. Respondent frequently uses the internet to communicate with clients and other business contacts and to solicit prospective clients.

Both respondent and appellant Marianne Luban, a Minnesota resident, participated in an internet newsgroup on archeology. A newsgroup addresses a specific topic and allows anyone with an interest in the topic to "chat," or to exchange information and engage in discussions or debates by posting messages on a website. It is unclear from the record who or what organization maintained this newsgroup.

A dispute arose between respondent and appellant over the topic of Egyptology. In December 1996, appellant posted a message challenging respondent's credentials as an Egyptologist and alleging that respondent had received her degree from a "Cracker Jack box." Respondent responded to the posting by citing her professional credentials in a private e-mail to appellant, and the University of Alabama posted a message verifying that respondent had taught noncredit courses in Egyptian history and culture in the university's special-studies department since 1980. Appellant continued posting messages that disputed respondent's credentials and accused her of being untruthful.

In May 1997, respondent's attorney sent appellant a letter stating that respondent had obtained legal representation "to put a stop to [appellant's] periodic attacks on [respondent's] character and professional reputation." The attorney demanded that appellant refrain from making future attacks against respondent and retract any and all false statements. Appellant was advised that failure to comply would result in legal action. Appellant continued her postings, and it is estimated that between December 1996 and June 1998, appellant posted to the chat line approximately 100 derogatory messages about respondent.

In October 1997, respondent brought a defamation claim against appellant in Alabama state court. Appellant did not answer the complaint or make any appearance in the Alabama action, and respondent obtained a $25,000 default judgment against appellant. Respondent also obtained an injunction prohibiting appellant from asserting or implying that respondent misrepresented her credentials. After respondent filed the Alabama judgment in Ramsey County District Court, appellant moved to vacate the Alabama judgment on the ground that the Alabama court lacked personal jurisdiction over her.

On May 15, 2000, a hearing was held in district court. Appellant reiterated her argument that Alabama lacked personal jurisdiction and, therefore, the default judgment could not be enforced in Minnesota. Appellant also argued that the injunction violated the First Amendment. The district court found that the Alabama court had personal jurisdiction over appellant and, therefore, the judgment must be given full faith and credit. The court did not make any findings or legal conclusions on the First Amendment issue. This appeal follows.

ISSUES

I. Did Alabama have personal jurisdiction over appellant?

II. Does the injunction violate the First Amendment?

ANALYSIS

I.

Whether personal jurisdiction exists is a question of law and, therefore, our review is de novo. *State Inc. v. Sumpter & Williams*, 553 N.W.2d 719, 721 (Minn. App. 1996). "If the defendant does not appear in the foreign proceedings and does not litigate the issue of personal jurisdiction, the foreign judgment does not have res judicata effect on that issue." *Corsica Cheese, Inc. v. Roers Enters., Inc.*, 389 N.W.2d 751, 753 (Minn. App. 1986) (citation omitted).

Under the Uniform Enforcement of Foreign Judgment Acts, Minn. Stat. § 548.27 (2000), Minnesota will not give full faith and credit to a foreign court's judgment if that court lacks proper personal jurisdiction. *Electro-Measure, Inc. v. Ewald Enters., Inc.*, 398 N.W.2d 85, 88 (Minn. App. 1986), *review denied* (Minn. Mar. 13, 1987). To acquire personal jurisdiction, the foreign court must comply with its own state's laws regarding jurisdiction and with the Due Process Clause of the United States Constitution. *S.V. Mgmt. Co. v. Ellis*, 472 N.W.2d 674, 676 (Minn. App. 1991), *review denied* (Minn. Sept. 13, 1991). In determining whether the foreign court properly obtained personal jurisdiction, this court must apply the law of the foreign state as construed by the courts of that state. *Id.*

We recently addressed whether Minnesota courts could exercise personal jurisdiction over a foreign resident who made a defamatory statement regarding a Minnesota corporation over the internet. *N.W. Airlines, Inc. v. Friday*, 617 N.W.2d 590 (Minn. App. 2000). Our holding that personal jurisdiction did not exist turned on a specific provision in Minnesota's long-arm statute, which limits the statute's reach over defamation claims. *Id.* at 593 (discussing Minn. Stat. § 543.19, subd. 1(d)(3) (2000)).

But jurisdiction here turns on Alabama's long-arm rule, and it does not have a special exclusion for defamation.[1] The reach of the Alabama long-arm rule over a nonresident defendant extends to the permissible limits of due process under the Fourteenth Amendment. *Lowry v. Owens*, 621 So.2d 1262, 1264 (Ala. 1993). Therefore, our inquiry concerns constitutional, not statutory, principles – whether Alabama can exercise personal jurisdiction over appellant without violating the Due Process Clause.

To satisfy due process requirements, the nonresident defendant must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice."' *Larson v. Dunn*, 460 N.W.2d 39, 43 (Minn. 1990) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (citation omitted)) (alteration in original). In determining what constitutes minimum contacts, a district court must focus on "the relationship among the defendant, the forum, and the litigation." *Calder v. Jones*, 465 U.S. 783, 788, 104 S. Ct. 1482, 1486 (1984) (quotation omitted). "This relationship is defined by the defendant's contacts with the forum state, not with its residents." *Larson v. Dunn*, 449

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[1] Alabama does not have a long-arm statute; its rules of civil procedure provide an equivalent legal basis. *Williams v. Skysite Communications Corp.*, 781 So.2d 241, 245 (Ala. Civ. App. 2000). The jurisdictional rule provides that an

> [a]ppropriate basis exists for service of process outside of this state upon a person in any action in this state when
>
> (A) the person is, at the time of the service of process, either a nonresident of this state or a resident of this state who is absent from the state, and
>
> (B) the person has sufficient contacts with this state * * * so that the prosecution of the action against the person in this state is not inconsistent with the constitution of this state or the Constitution of the United States * * *.

Ala. R. Civ. P. 4.2(a)(1).

N.W.2d 751, 759 (Minn. App. 1990), *aff'd*, 460 N.W.2d (Minn. 1990).

The Alabama courts have construed the minimum-contacts requirement to mean that "[t]here must be some contact with the state that results from an affirmative act of the defendant." *Williams*, 781 So.2d at 246 (citing Ala. R. Civ. P. 4.2 comm. cmt.). Similarly, we have found that a single act may be enough to establish personal jurisdiction, but if jurisdiction is based on such a singular occurrence, the nature and quality of the contact becomes dispositive. *Johnson v. Selmor Distrib. Co.*, 430 N.W.2d 495, 497 (Minn. App. 1988), *review denied* (Minn. Dec. 21, 1988). For example, a single telephone call is unlikely to constitute sufficient contact. *Kittle Heavy Hauling v. Gary A. Rubel, Inc.*, 647 So.2d 743, 744 (Ala. Civ. App. 1994) ("The use of an interstate facility (i.e., telephone) is an ancillary factor and does not, alone, provide the requisite minimum contacts." (citation omitted)). The unilateral activity of one party claiming a relationship with a nonresident party will not satisfy the requirement of minimum contacts with the forum state. *Id.* (relying on *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228 (1958)).

In reviewing the district court's determination, we find *Calder v. Jones* especially instructive. In that case, the Supreme Court held that personal jurisdiction properly could be exercised over nonresident media when the effects of their intentional conduct were felt in the forum state. *Calder*, 465 U.S. at 787 n.6 & 790, 104 S. Ct. at 1485 n.6 & 1487. The plaintiff was a California resident and the subject of an article in a national newspaper. *Id.* at 785, 104 S. Ct. at 1484. In addition to suing the newspaper, she also named the article's author and its editor as defendants. *Id.* Because they lived and worked in Florida, the employees argued that they could not be haled into a California court as they had "no direct economic stake in their employer's sales in a distant State. Nor are ordinary employees able to control their employer's marketing activity." *Id.* at 789, 104 S. Ct. at 1487.

The Supreme Court rejected the employees' arguments, finding that their lack of an economic contact with California

was irrelevant. *Id.* Such contact might be meaningful in a case alleging negligence, but here, the employees were being accused of an intentional tort that was aimed at the forum state. *Id.* The employees prepared

> an article that they knew would have a potentially devastating impact upon [the plaintiff]. And they knew that the brunt of that injury would be felt by [the plaintiff] in the State in which she lives and works and in which [their employer] has its largest circulation. Under the circumstances, [the employees] must "reasonably anticipate being haled into court there" to answer for the truth of the statements made in their article. An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.

Id. at 789-90, 104 S. Ct. at 1487 (quotations omitted).

Likewise, we agree with the district court in holding that, consistent with the Fourteenth Amendment, Alabama could exercise personal jurisdiction over appellant. First, appellant should have foreseen that she might be sued in Alabama because she had actual knowledge of the effect that her messages were having in Alabama. The messages appellant posted directly attacked the professional credentials of respondent and were related to her employment in Alabama.

Appellant contends that she lacked actual knowledge because she did not know that respondent lived in and worked from Alabama. But this statement rings false. On December 23, 1996, the University of Alabama posted information about respondent's relationship with the university. The district court found that this verification of respondent's employment indicated that appellant's postings were reaching Alabama and affecting respondent's professional standing in Alabama. Additionally, the May 20, 1997 letter from respondent's attorney to appellant stated

that appellant's accusations impugned respondent's professional reputation and threatened her business. Despite being warned that her actions were affecting respondent, appellant continued to make postings.

Second, appellant made multiple contacts with the foreign state. We have previously dismissed defamation claims for want of personal jurisdiction where the defendant had no connection with Minnesota. *E.g., Johnson,* 430 N.W.2d at 498 (holding a Wisconsin corporation that was not licensed to conduct business in Minnesota and had sporadic business dealings with Minnesota companies did not have sufficient minimum contacts). While we agree with appellant that she had no economic contacts with Alabama, we disagree that she did not establish a connection with that state. Appellant repeatedly made postings, even after she was threatened with legal action. Although the postings were not made in Alabama, these repeated messages could be—and were—received in Alabama. Just as the employees in *Calder* were aware that their article would be carried outside their home state's boundaries, appellant wrote messages that she knew would be read in a foreign state. She was also aware that her messages were causing damage in Alabama. Although a Minnesota resident, appellant should have realized that by making potentially defamatory statements that were being read in Alabama, she could be haled into court in Alabama to prove the truth of those statements. Therefore, we agree with the district court that the Alabama court had personal jurisdiction over appellant.

II.

Appellant also argues that the injunction violates the First Amendment. Because of this alleged illegality, appellant argues that the district court erred when it found in favor of respondent. The First Amendment plays no role in the jurisdictional analysis. *Calder,* 465 U.S. at 790, 104 S. Ct. at 1487. This issue, however, is not properly before us in the

context of this appeal from the order and judgment from December 2000.

DECISION

The district court did not err in determining that the Alabama court had personal jurisdiction over appellant. The issue of whether the injunction violates the First Amendment is not before this court in this appeal.

Affirmed.

s/Jill Flaskamp Halbrooks
September 5, 2001

STATE OF MINNESOTA

IN SUPREME COURT

C3-01-296

Court of Appeals

Blatz, C.J.
Took no part, Gilbert, J.

Katherine Griffis,

Respondent,

Filed: July 11, 2002
Office of Appellate Courts

vs.

Marianne Luban, petitioner,

Appellant.

SYLLABUS

A nonresident defendant is not subject to a foreign court's jurisdiction under the effects test from *Calder v. Jones*, 465 U.S. 783 (1984), absent a showing that: (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum such that the forum state was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity.

Reversed and judgments vacated.

Heard, considered, and decided by the court en banc.

OPINION

BLATZ, Chief Justice

Respondent Katherine Griffis brought suit against appellant Marianne Luban in Jefferson County, Alabama, alleging defamation and invasion of privacy arising out of statements made by Luban on the internet. Luban did not appear in the Alabama action, and the Alabama district court entered a default judgment for $25,000 in damages and issued an injunction prohibiting Luban from making certain statements in the future. Griffis filed the Alabama judgment in Ramsey County District Court, and Luban brought a motion to vacate, challenging the jurisdiction of the Alabama court. The Ramsey County District Court upheld personal jurisdiction of the Alabama court over Luban, and the court of appeals affirmed. We reverse.

Respondent Katherine Griffis, an Alabama resident, has taught noncredit courses in ancient Egyptian history and culture at the University of Alabama, Birmingham. Griffis also works as a self-employed consultant. Appellant Marianne Luban, a Minnesota resident, maintains a nonprofessional interest in the history and culture of ancient Egypt. Both Luban and Griffis have participated in an internet newsgroup on archeology, the *sci.archaeology* newsgroup, since at least 1996. A newsgroup is a forum for intenet users that addresses a specific topic and allows participants to exchange information and engage in discussions or debate by "posting" messages on the website. The *sci.archaeology* newsgroup is public and so messages posted there can be accessed anywhere by any person with internet access.

During the latter part of 1996 a disagreement arose between Luban and Griffis relating to the subject of Egypt and Egyptology. In December 1996 Luban posted a message challenging Griffis's credentials as an Egyptologist, and accusing Griffis of obtaining her degree from a "box of Cracker Jacks." Griffis states that she responded by citing her

credentials in an electronic message sent directly to Luban. The disagreement continued into 1997, with both Luban and Griffis continuing to post messages relating to their disagreement on the *sci.archaeology* newsgroup. In May 1997, Griffis's attorney sent a letter to Luban demanding that Luban refrain from attacking Griffis's character and professional reputation. The letter threatened legal action if Luban did not retract the prior statements and refrain from future attacks. Although Griffis asserts that Luban continued posting defamatory messages after receiving this letter, the record before us does not include any statements made by Luban, whether on the *sci.archaeology* newsgroup or elsewhere, after March, 1997.

In September 1997, Griffis brought a defamation action against Luban in Alabama state court. Griffis's complaint alleged that Luban posted statements on the newsgroup asserting that Griffis obtained membership in the International Association of Egyptologists and inclusion on other lists of Egyptologists by misrepresenting her qualifications, that Griffis was a liar, was not affiliated with the University of Alabama, did not have a juris doctor degree, and that Griffis's consulting business was not legitimate. Because Luban was advised by her attorney that the Alabama state court did not have personal jurisdiction over her, she did not answer the complaint or make any appearance in the Alabama action. On December 17, 1997, the Alabama court entered a default judgment against Luban. The court assessed damages in the amount of $25,000 and also issued an injunction specifically enjoining Luban from publishing certain statements in the future.[1]

---

[1] The injunction prohibited Luban from publishing in any form—including on the internet, world wide web and e-mail—statements asserting or implying that Griffis is a liar, a phony, a con-artist or scam artist, that she has falsified her credentials as an Egyptologist, that she is not affiliated with the University of Alabama, that she does not have a juris doctor degree, and that she is not engaged in a legitimate consulting business.

On May 5, 1998, Griffis filed the Alabama judgment in Ramsey County District Court in order to enforce its terms against Luban. Luban moved to vacate the judgment on the basis that the Alabama court lacked personal jurisdiction over her. A referee initially granted Luban's motion, but on reconsideration concluded that the Alabama court had personal jurisdiction over Luban and ordered entry of a Minnesota court judgment against Luban. On appeal, the court of appeals vacated the referee's order because it had not been confirmed or countersigned by a district court judge. In the interim, Luban petitioned for bankruptcy, and on March 15, 2000, the bankruptcy court discharged the $25,000 judgment from the Alabama court.

In March 2000, Luban renewed her motion in district court to vacate the Alabama judgment, and Griffis filed a cross-motion to enforce the Alabama injunction. The court found that the Alabama district court had personal jurisdiction over Luban and therefore the judgment must be given full faith and credit. Judgment was entered on December 21, 2000. On Luban's appeal, the court of appeals affirmed, ruling that the district court did not err in its determination that the Alabama court properly exercised personal jurisdiction over Luban. *Griffis v. Luban*, 633 N.W.2d 548, 553 (Minn. App. 2001). The court of appeals concluded that Luban was subject to the Alabama court's jurisdiction because she made potentially defamatory statements that were being read in Alabama and had knowledge of the effect of those statements in Alabama. *Id.* Luban sought and was granted review in this court.

The question presented is whether the Ramsey County District Court correctly determined that the Alabama district court had personal jurisdiction over Luban so that the Alabama judgment is entitled to full faith and credit in the Minnesota courts. This court recognizes the right of a defendant to contest an action brought on the basis of a foreign court's judgment by demonstrating that the foreign court rendered the judgment in the absence of personal jurisdiction over the defendant. *David M. Rice, Inc. v. Intrex,*

Inc., 257 N.W.2d 370, 372 (Minn. 1977). Such judgments are not entitled to full faith and credit in Minnesota. Uniform Enforcement of Foreign Judgments Acts, Minn. Stat. § 548.27 (2000); *Hutson v. Christensen*, 295 Minn. 112, 117, 203 N.W.2d 535, 538 (1972). Minnesota courts will uphold a foreign court's exercise of personal jurisdiction over a nonresident defendant when two requirements are met: (1) compliance with the foreign state's law providing jurisdiction, and (2) the exercise of jurisdiction under circumstances that do not offend the Due Process Clause of the federal constitution. *Intrex*, 257 N.W.2d at 372. Whether personal jurisdiction exists is a question of law and therefore our review is de novo. *See VH. v. Estate of Birnbaum*, 543 N.W.2d 649, 653 (Minn. 1996); *see also Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) (applying de novo review to issue of whether foreign judgment entitled to full faith and credit).

For the first requirement, Minnesota courts apply the law of the foreign state, as construed by that state's courts. *See David M. Rice, Inc*, 257 N.W.2d at 372. Alabama law extends personal jurisdiction over nonresident defendants to the full extent permitted by due process. Ala. R. Civ. P. 4.2(a)(1)(B); *DeSotacho, Inc. v. Valnit Industries, Inc.*, 350 So.2d 447, 449-50 (Ala. 1977). Because Alabama provides jurisdiction as broad as due process will allow, the first requirement is subsumed by the second, and we need only determine whether Alabama's exercise of personal jurisdiction over Luban was consistent with due process.

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exercise personal jurisdiction over a nonresident defendant to circumstances where the defendant has "minimum contacts" with the state so that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Where the defendant had "continuous and systematic" contacts with the forum state, the court can exercise "general" jurisdiction over a nonresident defendant for all purposes, even for a claim that

is not related to the defendant's contacts with the forum state. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984) (quoting *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952)). Griffis does not contend that the Alabama courts could exercise general jurisdiction over Luban. Where the nonresident defendant's contacts with the forum state are not sufficient for general jurisdiction, the defendant may nonetheless be subject to "specific" jurisdiction—that is, jurisdiction over a claim that allegedly arose out of the defendant's contacts with the forum. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992). Griffis contends that Luban had sufficient contacts with Alabama, out of which her claims arose, to support the Alabama court's exercise of specific jurisdiction.

In judging minimum contacts for purposes of assessing the validity of specific jurisdiction, a court focuses on the "relationship among the defendant, the forum, and the litigation." *Helicopteros Nacionales de Columbia, S.A.*, 466 U.S. at 414-16 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)); *West American Ins. Co. v. Westin, Inc.*, 337 N.W.2d 676, 679 (Minn. 1983). For the minimum contacts requirement to be satisfied, the defendant must have "purposefully avail[ed]" herself of the privilege of conducting activities within the jurisdiction. *Imo Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3d Cir. 1998) (quoting and modifying *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). The defendant's conduct and connections with the forum state must be such that the defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The Supreme Court has explained that specific jurisdiction may be found where the nonresident defendant has "'purposefully directed' his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), and *Helicopteros Nacionales de Columbia, S.A.*, 466 U.S. at 414).

In asserting that the Alabama district court had personal jurisdiction over Luban, Griffis relies in particular, as did the courts below, on *Calder v. Jones*, 465 U.S. 783 (1984). In *Calder* the Supreme Court approved a test that had been employed by the California courts in that case for determining personal jurisdiction over nonresident defendants who allegedly committed an intentional tort outside the forum. *Id.* at 787 & n.6. Rather than focusing only on the defendant's conduct within or contacts with the forum, the so-called "effects test" approved in *Calder* allowed long-arm jurisdiction to be based on the effects within the forum of tortious conduct outside the forum. *Id.*

Calder involved an allegedly libelous *National Enquirer* article written and edited by the defendants in Florida, but concerning the California activities of a California resident. *Id.* at 784-85. Although the *Enquirer* was distributed nationally, it had its largest circulation in California. *Id.* at 784-85. Plaintiff was an entertainer whose profession, the Court pointed out, was centered in California. *Id.* at 788. She brought suit in California against the Florida-based publication, its distributing company, and the reporter and editor of the article. *Id.* at 785-86. The reporter and editor moved to quash service of process for lack of personal jurisdiction. *Id.* at 785-85. Although the investigative contacts of one defendant with California, including a visit and several phone calls, were alleged as a basis for jurisdiction, the Court found it unnecessary to consider those direct contacts with the forum. *Id.* at 786-87 & n.6. Instead, the Court held that California had personal jurisdiction over the reporter and editor because their Florida conduct was "expressly aimed" at California, knowing that the harmful effects would be felt primarily there. *Id.* at 789. The Court emphasized that the alleged tort was not "mere untargeted negligence." *Id.* Under these circumstances, the Court found that defendants "must 'reasonably anticipate being haled into court'" in California for their out-of-state actions. *Id.* at 790 (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Courts have come to varying conclusions about how broadly the "effects test" approved in *Calder* can be applied to find jurisdiction. The Seventh Circuit Court of Appeals has construed *Calder* very broadly, concluding that "the state in which the victim of a tort suffers the injury may entertain a suit against the accused tortfeasor." *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997). However, the other federal courts of appeals that have considered the issue have rejected this expansive view that *Calder* supports specific jurisdiction in a forum state merely because the harmful effects of an intentional tort committed in another jurisdiction are primarily felt in the forum. E.g., *Imo Indus.*, 155 F.3d at 265. Thus, courts have consistently refused to find jurisdiction based on *Calder* merely because the plaintiff was located in the forum state and therefore felt the effects of the alleged intentional tortious conduct there. *E.g., id.; ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625-26 (4th Cir. 1997); *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1080 (10th Cir. 1995); *Southmark Corp. v. Life Investors Inc.*, 851 F.2d 763, 773 (5th Cir. 1988). Instead, the courts have construed *Calder* as requiring more than mere effects in the forum state. For example, the Ninth Circuit reasoned that "'something more'" than mere effects is needed and found that something more in the "'express aiming'" language of *Calder*. *Bancroft & Masters v. Augusta Nat'l, Inc.* 223 F.3d 1082, 1087 (9th Cir. 2000) (quoting *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998); *Calder*, 465 U.S. at 789). But the court took a broad view of express aiming by concluding that the requirement is satisfied simply by "wrongful conduct [outside the forum] individually targeting a known forum resident." *Id.*

The Eighth Circuit adopted a narrower interpretation of *Calder*, stating that it was more than "mere effects" that supported the Supreme Court's holding. *Hicklin Eng'g, Inc. v. Aidco, Inc.*, 959 F.2d 738, 739 (8th Cir. 1992). The court found that the Iowa court's jurisdiction did not extend over a Michigan company that sent allegedly defamatory letters to customers of the Iowa-based plaintiff company. *Id.* The

customers to whom the letters were sent were all located outside of Iowa. *Id.* The court stated that while the defendant's statements to the non-Iowa customers were intended to promote the defendant's product to the detriment of the plaintiff's and therefore might have an adverse effect on the Iowa plaintiff, this effect alone was not sufficient to establish jurisdiction. *Id.*

Within the spectrum of differing circuit court interpretations of *Calder*, we believe the most cogent analysis of the *Calder* effects test is that of the Third Circuit in *Imo Industries*. In *Imo Industries*, the circuit court expressed concern over the possible breadth of *Calder*, asking whether under *Calder* a court can automatically infer that an out-of-state defendant can anticipate being haled into the forum from the fact that the defendant knew that plaintiff resided in the forum. 155 F.3d at 262-63. After examining how a number of other courts construed *Calder*, the Third Circuit concluded that the *Calder* effects test is not satisfied by the "mere allegation that the plaintiff feels the effect of the defendant's conduct in the forum because the plaintiff is located there." 155 F.3d at 263. Instead, the court stated that *Calder's* holding "cannot be severed from its facts." 155 F.3d at 261. The court explained that in Calder the Supreme Court relied on three principal findings in reaching its conclusion that the California court properly exercised jurisdiction over the nonresident defendants, and the circuit court incorporated those findings into a three-prong analysis for application of the Calder effects test. 155 F.3d at 261. The test requires the plaintiff to show that: (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum such that the forum state was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity. *Id.* at 265-66. Significantly, the court emphasized that to satisfy the third prong, the plaintiff must show that "the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and

point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum." Id. at 266 (emphasis added).

We, too, are cautious about applying *Calder* too broadly. Although the Supreme Court has engaged in little further discussion of *Calder,* in one post-*Calder* decision the Court did make it clear that foreseeability of effects in the forum is not itself enough to justify long-arm jurisdiction. The Court explained:

> [T]he constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co. v. Washington,* [326 U.S.] at 316. Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S., at 295. Instead, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.,* at 297.

Burger King Corp., 471 U.S. at 474 (footnote omitted). If foreseeability of injury in the forum is not enough, it follows that something more than defendant's knowledge that the plaintiff is a resident of the forum and will feel the effects of the tortious conduct there must be necessary to satisfy the effects test. We conclude that something more than mere effects in the forum state is required, and agree with the Third Circuit that the Supreme Court did not "carve out a special intentional torts exception to the traditional specific jurisdiction analysis, so that a plaintiff could always sue in his or her home state." *Imo Indus.,* 155 F.3d at 265. Broad

applications of the effects test, such as those of the Seventh and Ninth Circuits, cast too wide a net and incorrectly disregard the factual underpinnings of the Court's holding in *Calder*. We adopt the three-prong analysis articulated by the Third Circuit in *Imo Industries*, as it properly synthesizes the bases of the Court's decision in Calder without effecting an overly broad application.

The critical question in this case turns on the third prong, whether the defendant expressly aimed the allegedly tortious conduct at the forum such that the forum was the focal point of the tortious activity.[2] As noted above, to satisfy the third prong, the plaintiff must show that "the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum." *Imo Indus.*, 155 F.3d at 266.

Griffis argues that Luban directed the defamation at the Alabama forum because she targeted her messages at Griffis, whom she knew to be an Alabama resident, and because Luban knew that messages posted on the *sci.archaeology* newsgroup could be read anywhere in the world and in fact were read by Griffis in Alabama. Griffis further contends that Luban's defamatory statements had "deleterious effects" on Griffis's consulting business and her professional reputation in Alabama. The district court agreed with Griffis, stating that Luban "never denied that she knew Plaintiff was located in Alabama, and that her allegedly defamatory messages would have an 'effect' on Plaintiff's professional career in Alabama."

While the record supports the conclusion that Luban's statements were intentionally directed at Griffis, whom she knew to be an Alabama resident, we conclude that the evidence does not demonstrate that Luban's statements were

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[2] Because all three prongs must be satisfied for jurisdiction to attach, we need address the other two prongs only if this requirement is met.

"expressly aimed" at the state of Alabama.[3] The parties agree that Luban published the allegedly defamatory statements on an internet newsgroup accessible to the public, but nothing in the record indicates that the statements were targeted at the state of Alabama or at an Alabama audience beyond Griffis herself. The newsgroup on which Luban posted her statements was organized around the subjects of archeology and Egyptology, not Alabama or the University of Alabama academic community. According to Griffis, Luban's messages were widely read by her colleagues—the other amateur Egyptologists who participated in the *sci.archaeology* newsgroup. But Griffis has not presented evidence that any other person in Alabama read the statements. Nor has she asserted that Alabama has a unique relationship with the field of Egyptology, like the close relationship between the plaintiff's profession and the forum state that the Supreme Court found relevant in *Calder*. Therefore, even if we assume Luban's statements were widely read by followers of the *sci.archaeology* newsgroup, the readers most likely would be spread all around the country—maybe even around the world—and not necessarily in the Alabama forum. The fact that messages posted to the newsgroup could have been read in Alabama, just as they could have been read anywhere in

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[3] Luban concedes that she knew Griffis lived in Alabama. But this fact alone is insufficient to conclude that Luban expressly aimed her allegedly tortious conduct at the Alabama forum. We look to the record for other evidence that the Alabama forum was the focal point of the defamatory statements. The record contains only two messages posted by Luban on the *sci.archaeology* newsgroup that identify the Alabama forum in any way. In one, Luban stated Griffis was "from the great state of Alabama." In another, in response to a message by Griffis signed University of Alabama at Birmingham, Special Studies, Luban asked: "What are special studies and what have you to do with them." In response, Griffis posted, "Now for the record, I am an instructor with the University of Alabama at Birmingham, Department of Special Studies, and have been for over 17 years." Luban also acknowledges that she made one phone call to the University of Alabama, in which she asked a receptionist whether Griffis was employed there.

the world, cannot suffice to establish Alabama as the focal point of the defendant's conduct.

To support her assertion that Luban's statements affected her professional integrity in Alabama, Griffis relies on the message posted by a dean at the University of Alabama. But that message simply verified that Griffis had taught noncredit classes related to ancient Egypt at the University of Alabama's Department of Special Studies. The statement did not indicate an awareness of Luban's statements, nor did it indicate that Griffis's integrity or reputation had been impugned at the University. Significantly, the dean posted the message to another newsgroup because she did not have access to *sci.archaeology* newsgroup on which Luban made her postings. Griffis later copied the Dean's message onto the *sci.archaeology* newsgroup. Thus nothing in the factual record before us indicates that Luban's messages were read by any other person in Alabama, or by anyone in the academic community at the University of Alabama. Griffis also relies on a letter her attorney wrote to Luban threatening litigation to establish that Luban knew her postings would harm Griffis's consulting business in Alabama. But the letter states only that Luban's statements were "threatening" Griffis's business and did not specify any details about the business. Nor does anything in the record establish that Griffis's consulting business was focused in Alabama, beyond the fact that Griffis herself was located there.[4] Unlike the facts in *Calder*, where the defamatory article was focused on California activities of a California plaintiff whose professional industry was centralized in California and was carried by a national newspaper with its highest circulation in California, Griffis did not "expressly aim" her statements at the state of

[4] In fact, a copy of the website of the consulting business in the district court record identifies Griffis Consulting as "a U.S.-based consulting firm * * * involved in both domestic and international services to business, government, and other organizations." There is no mention of Alabama on the website, other than an ad from the hosting site.

Alabama such that Alabama was the focal point of the tortious activity.

In sum, we conclude that the record does not demonstrate that Luban expressly aimed her allegedly tortious conduct at the Alabama forum so as to satisfy the third prong of the *Imo Industries* analysis. The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements. As a result, even if Luban knew or should have known that defamatory statements about Griffis would affect her in her home state of Alabama, that alone is not enough to demonstrate that Alabama was the focal point of Luban's tortious conduct. Failing this, Griffis cannot rely on *Calder* to confer personal jurisdiction based on Luban's allegedly intentional tortious conduct. Because Griffis does not claim any other basis on which the Alabama court could properly extend personal jurisdiction over Luban, the judgment of the Alabama court is not entitled to full faith and credit in Minnesota. The decisions of the courts below enforcing the Alabama judgment are therefore reversed, and the Alabama judgment filed in Ramsey County District Court on May 5, 1998, under the Uniform Enforcement of Foreign Judgments Acts, Minn. Stat. § 548.27, and the Ramsey County District Court judgment entered on December 21, 2000, based on the Alabama judgment, are vacated.

Reversed and judgments vacated.

GILBERT, J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
IN THE SUPREME COURT

C3-01-296

Katherine Griffis,

Respondent,

vs.

Marianne Luban,

Appellant,

Petition for Rehearing
Pursuant to
Minn. R. App. P. 140.01

TO: The Supreme Court of Minnesota of the State of Minnesota:

INTRODUCTION

Katherine Griffis, requests a rehearing pursuant to Minn. R. App. P. 140.01 in the above captioned matter on the following grounds:

(a). The controlling decision is Calder v. Jones, 465 U.S. 783 (1984).

(b). The Court failed to note:

(1). Luban knew Griffis taught courses in ancient Egypt at the University of Alabama;

(2). Luban knew Griffis's consulting business was based in Alabama;

(3). the lower court found Luban asserted Griffis's credentials came from "a cracker jack box"; and,

(4). Luban asserted Griffis misrepresented her Alabama-based professional credentials in applying to professional organizations.

(c). The initial opinion of this Court misconceives the reasoning of the United States Supreme Court in Calder v.

Jones, in determining how the author of a defamatory work may be found to have "targeted" a particular forum. This Court required Griffis show Luban's statements were circulated or read in the forum to establish personal jurisdiction over Luban. Distribution, or other similar factors unrelated to the creation of the author's work, was specifically *prohibited* in determining the existence or personal jurisdiction by Justice Rehnquist's unanimous opinion in Calder v. Jones.

The Court's initial opinion misapplies and contravenes the plain direction in Calder that prohibits consideration of questions related to distribution, when personal jurisdiction over an author of an allegedly libelous work is at issue. Calder at 789-90.

DISCUSSION

Petitioner prays that this honorable Court grant a re-hearing in the captioned matter under Minn. R. App. P. 140.01 (a), (b) and (c), and that the Court re-examine its reading of Calder v. Jones to prevent the Court from inadvertently overruling an opinion of the United States Supreme Court. The reasoning advanced in its initial opinion in this case by this Court, if allowed to stand, will require a reversal of Calder v. Jones on the question of personal jurisdiction, if the author in Calder were to publish the same story on an Internet Website.

An analysis that leads to a conclusion contrary to the outcome in binding Supreme Court precedent will put this Court directly at odds with the United States Supreme Court's established due process analysis, in the event that a petition for a writ of certiorari is filed in this matter.

1. This Court apparently misapprehended the "effects test" of Calder v Jones, 465 U.S. 783 (1984) by requiring plaintiff produce evidence of distribution of libelous statements in the forum, since Justice Rehnquist *specifically rejected* considering distribution in the forum as a factor in evaluating the personal jurisdiction over the writer and editor defendants in that case.

The Court erred in requiring Griffis produce evidence that the offending statements had been distributed and read in Alabama to establish that the author of the statements had "targeted" Alabama, or made it the "focal point" of the libel. Justice Rehnquist's opinion in Calder v. Jones *specifically rejected any consideration of distribution* as a basis for evaluating personal jurisdiction with respect to an author.[1]

This Court concluded that personal jurisdiction did not lie because, "nothing in the record indicates that the statements were targeted at the state of Alabama or at an Alabama audience *beyond Griffis herself....Griffis has not presented evidence that any other person in Alabama read the statements*...the fact that messages could have been read anywhere in the world cannot suffice to establish Alabama as the focal point of the defendant's conduct." (Op. at p. 14).

The Court clearly relied on distribution to readers in the forum as a central factor in deciding that state had not been "targeted" by Luban, and that her statements were not "expressly aimed at Alabama." (Op. p. 13). This approach is

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[1] Circulation of the story and exposure to an audience are very important factors with respect to the substantive defamation claim, itself. Typically, a defendant can raise these issues as a defense to the claim, but under Calder v. Jones, cannot be considered in the determination of personal jurisdiction. Like First Amendment defenses, lack of circulation or an audience would be "double counted" if also considered as part of the jurisdictional question. *See,* Herbert v. Lando, 441 U.S. 153 (1979), cited in Calder v. Jones at 790. Perhaps the initial opinion of this Court conflated the distribution requirement of the substantive claim with the personal jurisdiction issue, which quite easily could result in the reasoning in the opinion.

directly at odds with the test Calder established to determine whether an author has "targeted" or "expressly aimed" a story, statement or article at a particular forum.

The Court erred because Justice Rehnquist's opinion in Calder *specifically rejected* consideration of *any* factors related to distribution of the offending story, in that case. While distribution may be relevant to personal jurisdiction questions with respect to a publisher or a distributor of an allegedly libelous work, distribution in the forum *cannot* be relevant to personal jurisdiction issues concerning the *author* of the work, because the author in Calder was specifically held *not* to be responsible for the distribution of the story by the author's employer, the National Enquirer.[2]

A crucial aspect of the Calder, opinion, which was not reflected in the initial opinion of this Court, is that Justice Rehnquist agreed with petitioners's assertion that distribution of the story in the forum *could not* be charged to them:

> "that they are not responsible for the circulation of the article in California...have no direct economic stake in employer's sales in a distant state...[n]or are ordinary employees able to control their employer's marketing activity." Calder at 789.

Justice Rehnquist made absolutely clear that, "Petitioners are correct that their contacts with California are *not* to be judged according to their employer's activities there." *Id.* (emphasis added). The employer's activities were distribution and sales.

Personal jurisdiction over the writer and editor *could not* have been based upon distribution in the forum in Calder because the Due Process clause, itself, *prohibits* charging any sales, distribution, marketing, or any other actions of the employer to employees who only wrote and edited the story, but did not distribute it. "The requirements of International

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[2] "Petitioners are correct that their contacts with California are not to be judged according to their employer's activities there." Calder at 790.

Shoe...must be met as to *each defendant* over whom a state court exercises jurisdiction." Calder at 1488, citing Rush v. Savchuck, 444 U.S. 320, 332 (1980) (emphasis supplied).

Calder establishes that when the claim is defamation, and injury caused by the *content of the story* is at issue, *distribution of that story is irrelevant* with respect to personal jurisdiction over the *author or editor*. In applying the "effects test" to the facts in this case, this Court is not free to base its opinion upon factors specifically rejected by the United States Supreme Court in Calder v. Jones. Any requirement that Griffis demonstrate distribution to establish that Luban, the author, "targeted" Alabama cannot be supported by Justice Rehnquist's Calder opinion.[3]

2. The "effects test" of Calder v. Jones applies to foreseeable harm in the forum only when the author "targets' the forum in the contents of the story, itself, *without any consideration to distribution,* and Calder sets forth the factors that this Court must consider with respect to an author's acts of "targeting."

The "effects test" in Calder is not based on the concept that "foreseeability" of harm is enough to establish personal jurisdiction. Justice Rehnquist made absolutely clear that, with respect to employees who cannot control distribution:

> "The mere fact that they can 'foresee' that the article will be circulated and have an effect in California is

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[3] It is worth noting that Luban actually played an active role in distribution of the numerous statements posted to the news group. Unlike Mr. South in Calder, who wrote a single story and turned it over to his employer for distribution and sale, without knowing the story would ever be published, Luban actually initiated the worldwide distribution of her statements. She made them available to a worldwide audience in a way that South could never have imagined. Although could not control, any more than South, where, when, or by whom here statements might be read, she was able to make her statements available to an audience with a keystroke.

not sufficient for an assertion of jurisdiction." Calder at 789.

Calder was, and always has been, based upon needing "something more" than mere foreseeability of harmful "effects" in the forum to establish personal jurisdiction. But, Calder also establishes that this "something else" may *never* be distribution in the forum, when personal jurisdiction over the author of the work is at issue.

Calder, itself, provides the template for determining what factors, beyond foreseeability, which lower courts must consider when the cause of action is defamation or libel arising from an author's intentional creation of a work. The Supreme Court found personal jurisdiction to exist in Calder, not only because harm in California was "foreseeable", but because petitioners own intentional acts, *unrelated to distribution of the story by their employer*, "targeted" the forum. In the Calder context, these were the acts of writing and editing the allegedly libelous story. *Only* the actions of the writer and editor in researching, writing and editing content of story, could have *possibly* have provided the basis for personal jurisdiction over the employees in Calder.

Justice Rehnquist described the factors to find "targeting" by an author: (1) the story concerned the California activities of a California resident; (2) the story impugned the professionalism of her professional career that was centered in California; (3) the story was drawn from California sources; Calder at 788. (4) the brunt of the harm was suffered in California. Calder at 789. According to Justice Rehnquist, *these* are the factors that resulted in the conclusion that: "[i]n sum, California is the *focal point* both of the story and the harm suffered." (emphasis added) and made jurisdiction proper in California based,....on the effects of their Florida conduct in California." Id.

Bearing in mind that Calder is *explicitly* directed to defamation claims against the *author* of the allegedly libelous statement, this same method of analysis *must* be employed by this Court in evaluating whether the author in this case

"targeted" Alabama, even if this Court chooses to adopt the test from Imo Indus., Inc. v. Kiekert, 155 F.3d 254 (3rd Cir. 1998) or another lower court opinion that purports to interpret Calder. With respect to determining whether *an author* of allegedly defamatory statements has "targeted", "expressly aimed", or made a forum the "focal point" of the story, Calder v. Jones describes the factors that the lower courts must consider, *and may not consider,* when addressing personal jurisdiction issues.[4] Distribution in the forum *cannot* be a factor.

This error led the Court to consider facts that were not relevant to the question personal jurisdiction over the author in this case, and to ignore facts that support the Calder analysis, as mentioned in item (b) in the introduction of this Petition. *Infra,* p. 2.

3. The factors set out in Calder v. Jones to establish that the author's acts in creating the story "targeted" the forum state, require a finding that Alabama properly exercised personal jurisdiction in this case, when applied to the facts cited by the Court in this case and those in the record below.

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[4] In this respect, it is important to note that Imo v. Kiekert, 155 F.3d 254 (1998), does not involve a claim that the defendant was an author who defamed the plaintiff. Rather it arises from a claim of business interference by a European corporate defendant which threatened to revoke a European licensing agreement of a subsidiary of the plaintiff corporation. The plaintiff was incorporated in Delaware, had 22 plants around the world and a principle place of business in New Jersey. All licensing agreements in question were negotiated in Europe and applied only to a European subsidiary. New Jersey was not the site of any of the transactions at issue. The Imo court referred to Calder for an analogy to apply to an intentional tort that involved neither defamation, nor the author of that defamation. In that context, "foreseeability of harm" from an intentional act is certainly not enough to establish personal jurisdiction, but Imo provides no basis for altering the Calder analysis with respect to "targeting" when the issue IS the same as that in Calder -- personal jurisdiction over the author of allegedly defamatory statements.

In the initial opinion, this Court acknowledged that "the record supports the conclusion that Luban's statements were directed at Griffis, who she knew to be an Alabama resident." There can be no question that Luban could foresee that harm to Griffis' profession reputation and emotional state, if any occurred, would be felt most seriously in Alabama, not in cyberspace. All parties agree that this alone would not suffice to establish personal jurisdiction, had there been no intentional acts by the author calculated to bring that harm about.

This Court concluded that, "nothing in the record indicates that the statements were targeted at the state of Alabama, or at an Alabama audience *beyond Griffis herself.*" (Op. at p. 14).[5] But, determining whether an author has "targeted" a jurisdiction, if distribution *cannot* be relevant, can *only* be based on an author's actions in creating the allegedly libelous work. In Calder, the factors Justice Rehnquist used to determine whether the author had "targeted" California were: (1) the author's story concerned the California activities of a California resident; (2) the author's story impugned the professionalism of her professional career that was centered in California; (3) the author's story was drawn from California sources; (4) the brunt of the harm both in terms of emotional distress and injury to reputation, resulting from the author's story, was suffered in California. Calder at 789-90. Underlying all of

---

[5] Apparently, the Court recognizes that the "targeting" of Griffis, herself, did occur. But, to follow the logic of the Court, Griffis *could* not have been "targeted" by Luban merely posting to a Website or news group because the act of posting, alone, does not "target" an individual any more than it "targets" an audience, or a particular state. (Op. p. 13). Since the Court apparently recognizes that Griffis was "targeted", the Court must have concluded that Griffis was "targeted" by something other than the act of posting, itself. The only alternative is that the Court must have recognized that she was "targeted" because of the contents of the statements on the Website referred to Griffis specifically. Because of the contents of the postings and her knowledge of Griffis personal and professional life in Alabama, the forum was targeted in the same way, under the analysis required by Calder v. Jones.

these was that the author knew that the person who was "targeted" lived and worked in California.

In its initial opinion, this Court acknowledged that: (1) Luban knew that Griffis was an Alabama resident (Op. p. 13) and Luban's comments concerned Griffis' activities in Alabama (Op. p. 13, fn. 3); (2) Luban's statements impugned Griffis' professional credentials, employment and consulting business that Luban knew were centered in Alabama (Op. p. 13, fn. 3); (3) Luban contacted the University of Alabama as a source for her statements (Op. p. 13, fn. 3); (4) Luban also knew that the brunt of the harm to Griffis' reputation, both in terms of emotional distress and injury to reputation, would be felt most grievously in Alabama, where she lived and worked. According to the method of analysis applied in Calder, the injuries suffered by a person who is the "target" of defamatory statements are felt most in the place where the "target' lives and works, irrespective of who may read the story or where the story might be circulated.

Just as Shirley Jones' life and work in California was the intended "focus" of the author in Calder, Luban "targeted" Griffis' life and work, and made Alabama the "focus" of her libels.

4. The Court's reading of Calder v. Jones, if applied to the same story about Shirley Jones by the same author, would necessarily result in a finding that California lacked jurisdiction over the author and editor of the story, if the story was posted on the Internet, thus overturning Calder v. Jones, sub silentio.

By improperly relying on evidence of distribution in the forum to determine whether an author has "targeted" a forum, the Court has based its opinion on a method of analysis specifically rejected by Calder. In failing to look to the content of the alleged libel, and other evidence of the writer's intent, to find the "focus" of the author's story, the Court has missed the central meaning of the Calder opinion.

Perhaps there is no better way to illustrate the misapplication of the Calder analysis by this Court, to allegedly libelous postings on the Internet by an author, then to apply the Court's reasoning to the facts in Calder.

Under the Court's analysis as it stands, if the writer and editor in Calder were to post *exactly* the same story on an entertainment industry Website, Ms. Jones would then be in the same position as Griffis now finds herself in after this Courts initial opinion, and Ms. Jones would be unable to bring her action in California. Consequently, if this Court's requirement that "distribution", or receipt by a target "audience", is not re-considered, the result will be to allow exactly what Justice Rehnquist said that Calder was intended to prevent, with respect to authors of allegedly libelous works that might be distributed in any method beyond their control:

> "An individual in California [or Alabama] need not go to Florida for [Minnesota] to seek redress from persons who, though remaining in Florida [or Minnesota], knowingly cause injury in California [or Alabama]." Calder at 790.

If the Court's reading of Calder is not reversed, "seeking redress in Florida" would be exactly what Shirley Jones would have to do tomorrow, should the same author of the of the same story read this Court's opinion, and re-post the same story on the Internet. This cannot be what the Court intended.

CONCLUSION

The reasoning in the Court's initial opinion included an analysis of factors specifically prohibited from consideration by the United State Supreme Court in Justice Rehnquist's unanimous opinion in Calder v. Jones. When considering personal jurisdiction, *with respect to the author of allegedly libelous or defamatory communications,* distribution can play no role in determining whether the author of the statements is

amenable to suit in the forum. Whether the author "targeted" a forum depends upon what the author knew and the content of the statements, NOT their distribution which most authors cannot control. If the reasoning advanced by this Court were applied to the facts in Calder, Ms. Jones would not have been able to sue the writer and editor in that case.

The unintended consequence of this Court's reasoning is that it has struck down the exercise of a sister state's long arm jurisdiction by a misapplication of binding United States Supreme Court precedent. That precedent, Calder v. Jones, specifically rejects distribution as a factor in determining personal jurisdiction over the author of libelous statements. Adoption of this Court's reasoning would require reversing the outcome of Calder v. Jones, and over ruling the holding of the United States Supreme Court in that case.

WHEREFORE, Katherine Griffis respectfully requests an order granting the petition for rehearing, stay of judgement pursuant to Minn. R. App. P. 104.03, and an opinion affirming the lower courts.

Respectfully submitted: 7/19/02

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No. C3-01-296

STATE OF MINNESOTA
IN SUPREME COURT

Katherine Griffis,

Respondent,

vs.

Marianne Luban,

Appellant.

MEMORANDUM OF MARIANNE LUBAN IN RESPONSE TO PETITION FOR REHEARING

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Introduction

This Court should deny Katherine Griffis' Petition for Rehearing of its July 11, 2002, decision in this case. Griffis' unwarranted assault upon the decision has no merit.

Argument

I. The Petition for Rehearing Has No Merit and Should Be Denied.

Griffis' petition for rehearing hinges upon her interpretation of a single case, Calder v. Jones, 465 U.S. 783 (1984). That case figured prominently in the principal briefs of both appellant and respondent. It received extensive consideration and analysis in this Court' decision of July 11, 2002. Griffis' predictable disagreement with this Court's conclusions provides no basis for this Court to revisit its decision.

If anything, Griffis' strident argument reveals the ultimate absurdity of her position. For Griffis, the nature, location and extent of the intended audience of an allegedly defamatory statement should have no bearing upon questions of personal jurisdiction. For Griffis, apparently, litigation based upon allegedly defamatory statements could always be brought in the plaintiff's home location so long as the defendant knew where the plaintiff lived and worked. See Griffis Petition for Rehearing at 10 ("Underlying all of these was that the author knew that the person who was 'targeted' lived and worked in California.").

Thus, it would seem to follow that Griffis would argue that she constitutionally could have sued Luban in Alabama if Luban had made these same statements about Griffis at a gathering of amateur Egyptologists at the University of Minnesota, or to one friend over breakfast at a coffee shop in St. Paul. To suggest that Calder permits, much less mandates, such a result is absurd. Due process requires a higher level of minimum contacts with the forum state, as this Court held on

July 11, 2002. Griffis' misinterpretation of the law would encourage vindictive plaintiffs to commence frivolous defamation actions in their home states (or countries) against their critics who live in inconveniently distant locations. This Court's decision protects Minnesotans from such harassment tactics.

Griffis attempts at page 8 n. 4 to distinguish Imo Industries, Inc. v. Kiekert, 155 F.3d 254 (3d Cir. 1998) on the grounds that Imo was not a defamation action. However, the Third Circuit explicitly applied the Imo test to defamation claims in Remick v. Manfredy, 238 F.3d 248, 258-59 (3d Cir. 2001), reaching conclusions consistent with those of this Court. See also English Sports Betting, Inc. v. Tostigan, 2002 WL 461592 at *3 (E.D. Pa. March 15, 2002) ("There is a difference between tortious conduct targeted at a forum resident and tortious conduct expressly aimed at the forum. Were the former sufficient, a Pennsylvania resident could hale into court in Pennsylvania anyone who injured him by an intentional tortious act committed anywhere.").

This Court gave careful consideration to Calder and reached the appropriate conclusions in its original decision. The petition for rehearing has no merit and should be denied.

II. The Court Should Award Luban Attorneys Fees.

This Court, in denying Griffis' petition for rehearing, should also award Luban $500 in attorneys fees, as permitted by Minn. R. Civ. Proc. 140.03.

Conclusion

This Court fully considered and properly applied Calder v. Jones in its decision of July 11, 2002. It should deny Griffis' petition for rehearing and should award Luban $500 in attorneys fees.

Dated: July 24, 2002

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STATE OF MINNESOTA

IN SUPREME COURT

C3-01-296

Katherine Griffis,

Respondent,

vs.

Marianne Luban, petitioner,

Appellant.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of respondent Katherine Griffis for rehearing be, and the same is, denied.

IT IS FURTHER ORDERED that the request of appellant Marianne Luban for attorney fees under Minn. R. Civ. App. P. 140.03 be, and the same is, denied.

Dated: August 13, 2002

BY THE COURT:

/s/
Kathleen A. Blatz
Chief Justice

GILBERT, J., took no part in the consideration or decision of this matter.

Supreme Court U.S.
FILED
FEB 7 2003
OFFICE OF THE CLERK

No. 02-754

IN THE
SUPREME COURT OF THE UNITED STATES

KATHERINE GRIFFIS,

Petitioner,

v.

MARIANNE LUBAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI AND RESPONDENT'S APPENDIX

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QUESTION PRESENTED

Under the particular facts and circumstances reflected in the record below, did the Minnesota Supreme Court properly conclude that an Alabama circuit court did not have personal jurisdiction sufficient to enter a default judgment against a Minnesota resident based upon allegedly defamatory statements made in an internet discussion forum that did not target an Alabama audience?

PARTIES TO THE PROCEEDING

This is a dispute between two individuals: Katherine Griffis, a resident of Alabama, and Marianne Luban, a resident of Minnesota.

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

No compelling reason exists for this Court to review the July 10, 2002, decision of the Minnesota Supreme Court. That court reached the proper result on the issue of personal jurisdiction presented on this petition. The court below carefully analyzed the specific facts of this case in light of the precedents of this Court, including *Calder v. Jones*, 465 U.S. 783 (1984). The Minnesota decision is consistent with the decisions of other appellate courts, and has been cited with approval by the United States Court of Appeals for the Fourth Circuit and the California Supreme Court.

Accordingly, this Court should deny the petition for a writ of certiorari.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 646 N.W.2d 527 (Minn. 2002) (Pet.App.71), *reh'g denied* (Minn. Aug. 14, 2002) (Pet.App.101). That decision reversed the Minnesota Court of Appeals, 633 N.W.2d 548 (Minn. App. 2001) (Pet.App.61), which had affirmed an unreported decision of the Ramsey County District Court (Pet.App.51).

Griffis' Petition at 1 erroneously states that the Minnesota Court of Appeals upheld a decision of a Ramsey County District Court referee (Pet.App.44). In fact, that court earlier had vacated the referee's decision. *Griffis v. Luban*, 601 N.W.2d 712 (Minn. App. 1999). The vacation of the referee's order is reflected in the district court's docket listing for February 23, 2000. (Pet.App.59) Such vacated orders have no significance under Minnesota law. *See, e.g., In re Adoption of Pratt v. Lee*, 219 Minn. 414, 420, 18 N.W.2d 147, 151 (1945). The Petition nevertheless inexplicably relies upon the referee's decision (at p. 4), treats its findings as if they still had some effect (citing to it, without express identification, at p. 5), and quotes from it at length (at pp. 7-8).

JURISDICTION

The Supreme Court of Minnesota denied Griffis' Petition for Rehearing on August 14, 2002. (Pet. App. 101) In seeking review in this Court, the petitioner has invoked original jurisdiction under 28 U.S.C. § 1251, as well as discretionary review under 28 U.S.C. § 1257.

This case presents constitutional questions following final judgment by the highest court of Minnesota. Thus, jurisdiction in this Court would be proper under 28 U.S.C. § 1257 by discretionary grant of a writ of certiorari. Griffis' invocation of original jurisdiction under 28 U.S.C. § 1251 is misplaced, however. This dispute is simply one between the residents of different states.

FACTUAL AND PROCEDURAL BACKGROUND

The factual record in this case was imperfectly developed in a default proceeding in Alabama and in district court proceedings in Minnesota during which Marianne Luban represented herself after running out of funds to pay her first lawyer. The procedural history sprawls over two state court systems and federal bankruptcy court.

When this litigation began, petitioner Katherine Griffis was a resident of Alabama. She describes herself as "self-employed as a consultant on matters including international protocol, grant development activities and museum consulting." (Pet.App.3) She asserts that she holds a Juris Doctor degree from the Birmingham School of Law. (Pet.App.5) The Birmingham School of Law is not accredited. Griffis does not practice law. (Pet.App.5) From time to time, she taught brief, non-credit "Special Studies" classes at the University of Alabama at Birmingham. (Pet.App.4) She avows an interest in Egyptology, but nothing in the record establishes that she ever enrolled in or completed any formal degree program in that subject.

Respondent Marianne Luban lived in Minnesota. Due to medical disabilities, she has not been employed on a full-time basis since July 1995. She has a deep interest in matters relating to ancient Egypt. Luban's articles on Egyptology have been listed in the Annual Egyptological Bibliography, a resource published by the International Association of Egyptologists in cooperation with the Netherlands Institute for the Near East. That bibliography is available at http://www.leidenuniv.nl/nino/aeb.html (home page) (visited January 31, 2003). Luban's listed articles were published in 1998 and 1999.

Griffis and Luban posted messages to the "sci.archaeology" internet newsgroup concerning various points about the history or culture of ancient Egypt. (A27-28). Griffis objected to some of Luban's criticisms and sued Luban in Alabama circuit court in September 1997. (Pet.App.3) Griffis' complaint broadly alleged defamation, and sought compensatory and punitive damages and injunctive relief. (Pet.App.3-8). The complaint did not set forth the specific language of the allegedly defamatory statements.

Despite Griffis' allegations of numerous defamatory messages, the record in this case, as the Minnesota Supreme Court noted, "does not include any statements made by Luban, whether on the *sci.archaeology* newsgroup or elsewhere, after March, 1997" (Pet.App.73) and prior to the September 1997 commencement of litigation. The record in this case contains only four specific statements by Luban about Griffis predating the filing of the Alabama complaint on September 23, 1997; Griffis herself re-posted some of those statements to the newsgroup message board along with her own comments on March 28, 1997. (Pet.App.31-41) (The format and nature of the copies of internet messages in the record often makes it difficult to be sure of the date or

author of the communication, or even to determine whether the content has been altered or taken out of context.)

First, a message dated April 25, 1996, stating: "Dear Kat - Your being from the great state of Alabama speaks volumes (even though you do not express yourself very eloquently) about who you are and what you are!" (Pet.App.24) Griffis herself had asserted that Luban had written "A WHOLE LOT OF CRAP FROM WHAT I SEE."

Second, a posting dated December 17, 1996 (beginning at Pet.App.32) which included comments that "You are not in a position to know. You are not an Egyptologist." (Pet.App.33), "I can't imagine which 'Egyptologists' you were talking to. Perhaps they had the same credentials as yourself." (Pet.App.34), "Again, how would you know the 'real' issues that concern Egyptologists? The airs you give yourself are really quite ludicrous, Katherine." (Pet.App.37), and - in commenting upon Griffis' identifying herself with the line "University of Alabama at Birmingham>Special Studies" - the question, "What are 'Special Studies' and what have you to do with them?" (Pet.App.37), to which Griffis responded: "Now, for the record, I am an instructor with the University of Alabama at Birmingham, Department of Special Studies, and have been for over 17 years" (Pet.App.38).

Third, a posting on December 18, 1996, that:

> People work hard and make many sacrifices to earn their PhDs. Why a person like Katherine Griffis feels she has the right to circumvent all this and simply pluck a degree out of Cracker Jack box in order to lend herself some sort of cachet in a science-oriented newsgroup, is incomprehensible to me.

(Pet.App.25). It appears that Griffis does not have a graduate degree in Egyptology. (Pet.App.4) (complaint

alleges only that she "has had an ongoing interest in archaeology generally and Egyptology in particular for many years, and has studied the topic at the collegiate level").

Fourth, a posting on December 18, 1996 (incorporated within another posting dated December 21, 1996), that people

> could get their [PhD] degrees [in Egyptology] from a box of Cracker Jacks like Griffis did and still have themselves listed, as she has done, with all the greats of the science. You, yourself, have already admitted Griffis is no Egyptologist. ... [Clipping a listing that includes the entry "Griffis (Greenberg), Katherine; Univ. Alabama grifcon@usa.pipeline.com"] ...There she is, right up there with some of the foremost Egyptologist in the world, supposedly at the University of Alabama (except her e-mail address, as you know, has nothing to do with any university).

(Pet.App.27-28).

The four statements at issue focused upon Griffis' credentials and credibility within the community of persons with an interest in Egyptology, not upon Griffis' activities centered in Alabama. They did not impugn her law degree or her consulting business. The identification of Griffis' connection to Alabama went no further than what Griffis herself already had disclosed to the same internet newsgroup community. The statements are critical, but not self-evidently false or defamatory.

Luban received the complaint in the mail. (Pet.App.17) The complaint contained no allegations of personal jurisdiction over Luban. (Pet.App.3-8) The Alabama court's injunction and default judgment contain no jurisdictional findings or conclusions. (Pet.App.9-13) There is no evidence

that Luban ever conducted any business in Alabama, was present in Alabama, originated the publication or distribution of any statements about Griffis in Alabama, entered into any contracts or agreements with Griffis or any other Alabama resident, or used any Alabama publications, organizations, or residents in publishing or disseminating the allegedly defamatory statements that are the subject of Griffis' claims.

Believing that the complaint was "ludicrous and an attempt to harass me," and after consulting with a lawyer who told her that the complaint was without merit and that she was not subject to personal jurisdiction in Alabama, Luban did not answer the complaint and never appeared in the Alabama action. (Pet.App.17)

The Alabama court entered default judgment against Luban (Pet.App.12), awarded Griffis $25,000 (id.), and issued an injunction (Pet.App.9-11) as follows:

> 1. That [Luban] be, and hereby is, permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:
>
> A. that Plaintiff is a liar;
>
> B. that Plaintiff is a phony;
>
> C. that Plaintiff is a con-artist or scam artist;
>
> E. [*sic* (apparent typographical error)] that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;
>
> F. that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not

taught courses in Egypt or Egyptology through that affiliation;

G. that Plaintiff does not possess a Juris Doctor degree;

H. that Plaintiff is not engaging in a legitimate consulting business.

On May 5, 1998, Griffis filed the Alabama judgment in Minnesota district court, under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27. (Pet.App.55). On May 28, Luban moved to vacate the judgment, on the grounds that she was not subject to the personal jurisdiction of the Alabama court. (Pet.App.14-15, 55)

On August 31, 1998, a district court referee found that the Alabama default judgment was entered in violation of Luban's rights of due process. (Pet.App.44) Griffis moved for reconsideration, and the referee reversed his initial order and affirmed the Alabama judgment on February 10, 1999. (Pet.App.44) When Luban appealed, the Court of Appeals vacated the referee's orders because the court had erred by entering judgment upon the referee's order without a counter-signature by a district court judge. *See Griffis v. Luban*, 601 N.W.2d 712 (Minn. App. 1999).

After remand, facing increasing financial pressures as a result of this litigation, Luban petitioned for Chapter 7 bankruptcy. The monetary judgment against Luban was discharged in the bankruptcy court on March 15, 2000 without opposition from Griffis (Resp.App.26-27).

On March 21, 2000, Luban – now acting on her own behalf, without legal representation – renewed her jurisdictional challenge to the Alabama judgment. (Pet.App.49). Griffis in April 2000 countered by moving both to enforce the injunction and to show cause why Luban should not be held in contempt of the injunction.

(Resp.App.20). Griffis pointed to "25 Selected Posts in Violation of the Injunction," claiming to find 99 separate violations of the Alabama injunction. Among other things, Griffis contended that the injunctive command to not call her a "liar" had been violated by comments that the Alabama proceeding "was nothing more than a default judgment and that no libel or any of the other complaints of [Griffis] were proven in a court of law under challenge by an opposing counsel." Griffis asked the district court (1) to fine Luban not less than $99,000 for the alleged violations of the Alabama injunction, (2) to order the "surrender of Defendant's computer and modem," and (3) to incarcerate Luban if she did not fully comply with the relief sought. (Resp.App.23-24)

The district court heard argument on the cross-motions on May 15, 2000. It considered the issues without any reference to the referee's determinations. (Transcript of Oral Argument on May 15, 2000, at 7, 15) On December 13, 2000, it issued an order in which it affirmed the entry of the Alabama judgment, concluded that Luban was subject to personal jurisdiction in Alabama, and granted Griffis' motion for injunctive relief pursuant to the Alabama order. (Pet.App.51) As it later made clear (Transcript of Oral Argument dated March 21, 2001 at 2-3, 21), the district court did not independently assess the validity of the Alabama injunction in connection with its December 13, 2000 order. Instead, it simply incorporated the Alabama injunction.

Luban (through her current counsel of record, *pro bono publico*) appealed from both the December 13, 2000 order and the judgment entered on December 31, 2000. Appeal No. C3-01-0296, filed on February 15, 2001, challenged both personal jurisdiction of the Alabama court and the validity of the injunction as entered in both Alabama and Minnesota. (Pet.App.62)

On February 20, 2001, pursuant to Minn. R. Civ. P. 62.02, Luban moved to modify or suspend the injunction pending appeal. The district court heard argument on March 21, 2001. On April 25, 2001, the Court of Appeals rebuffed a Griffis challenge and held that the district court retained jurisdiction pending appeal to rule on Luban's motion to vacate the injunction. (Resp.App.1-2)

On June 13, 2001, the Ramsey County District Court issued an order vacating the prior injunctions against Luban. (Resp.App.3). It noted that, rather than "simply applying full faith and credit to the Alabama injunction," it now had taken "an independent look at the merits of the injunctive relief and the Constitutionality of such merits." (Resp.App.4-5). In the course of that independent look, the district court made the following Findings of Fact (Resp.App.5):

> 7. Plaintiff [Griffis] is using the [previously issued] injunction to prohibit any negative speech by Defendant [Luban] whether libelous or not, including but not limited to Defendant's legitimate criticisms of Plaintiff.
>
> 8. This injunction is a prior restraint on free speech.
>
> 9. Plaintiff has other remedies available should Defendant libel or slander Plaintiff.

Judgment was entered upon this order on July 9, 2001. Griffis appealed from that judgment on August 13, 2001. (Appeal No. CX-01-1350)

Meanwhile, Luban had moved in United States Bankruptcy Court to hold Griffis and her attorneys in contempt of Luban's March 15, 2000, bankruptcy discharge by reason of their April 17, 2000, motion to find her in contempt of the Alabama injunction. On May 9, 2001, that court granted Luban's motion for summary judgment

against Griffis and her attorneys C. Peter Erlinder and Ralph J. Overholt. (Resp.App.25) That court determined that the "plain intention" of Griffis' motion in Ramsey County District Court was "to both enforce the Alabama injunction and to either extract money damages from Luban for violations of the injunction or persuade the state court to incarcerate her for her purported contempt of the court." (Resp.App.33) The Bankruptcy Court found Griffis and her attorneys "in civil contempt of this Court for ... instituting contempt proceedings in Ramsey County District Court." (Resp.App.36) Following a trial on damages, the Court awarded fees and damages on July 18, 2001. (Resp.App.39) It also entered "a permanent injunction forever prohibiting the Defendants [Griffis, Erlinder, and Overholt] individually or in concert from seeking any redress or remedy whatsoever from the Plaintiff on the basis of prepetition conduct that did or would otherwise violate the Jefferson County Circuit Court of Alabama injunction entered against the Plaintiff in 1998." (Resp.App.40-41)

On September 11, 2001, the Court of Appeals in Appeal No. C3-01-0296 affirmed the district court judgment that the Alabama court had personal jurisdiction over Luban because she "should have realized that by making potentially defamatory statements that were being read in Alabama, she could be haled into court in Alabama to prove the truth of those statements." (Pet.App.61, 69). The Court of Appeals further held that the First Amendment challenge to the Alabama injunction "is not properly before us in the context of this appeal." (Pet.App.69-70). The Minnesota Supreme Court granted Luban's petition for further review. *Griffis v. Luban*, 2001 Minn. LEXIS 751 (Minn. Nov. 13, 2001).

The Court of Appeals heard oral argument in Appeal No. CX-01-1350 (Griffis' appeal from the judgment vacating the Alabama injunction) on December 11, 2001. On March 5, 2002, it issued an unpublished decision holding that the

broadest terms of the Alabama injunction (prohibiting Luban from ever calling Griffis a "liar") amounted to an unconstitutional prior restraint, but remanding to the district court for further consideration of whether some parts of the injunction should remain in effect. *Griffis v. Luban*, 2002 Minn. App. LEXIS 267 (Minn.App. March 5, 2002) (Resp.App.7).

The next day, on March 6, the Minnesota Supreme Court heard oral arguments in Appeal No. C3-01-296. On May 14, 2002, that court also granted Luban's petition for further review of the decision of the Minnesota Court of Appeals in Appeal No. CX-01-1350, staying further briefing and argument pending its decision in the first appeal. *Griffis v. Luban*, 2002 Minn. LEXIS 322 (Minn. May 14, 2002).

On July 11, 2002, the Minnesota Supreme Court unanimously reversed the Minnesota Court of Appeals in Appeal No. C3-01-296. *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002) (Pet.App.71) It held that the "mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements." (Pet.App.84) It vacated both the Alabama judgment and the Ramsey County district court judgment entered on December 21, 2000, based on the Alabama judgment. (*Id.*) Griffis' petition for rehearing was denied on August 13, 2002. *Griffis v. Luban*, 2002 Minn. LEXIS 606 (Minn. Aug. 13, 2002) (Pet.App.101).

On September 17, 2002, the Minnesota Supreme Court issued an order in Appeal No. CX-01-1350. Referring to its prior decision vacating the original judgments in Alabama and in the Ramsey County District Court, the court stated that "there is no legal basis on which the injunction that is the subject of this appeal and the court of appeals' remand

could be issued. Accordingly the decision of the court of appeals is vacated and the case remanded to the district court for final disposition of the case consistent with *Griffis I*." *Griffis v. Luban*, 2002 Minn. LEXIS 686 at *2 (Minn. Sept. 17, 2002) (Resp.App.43). Griffis has not sought further review of that order.

Griffis filed her petition for writ of certiorari in this Court on November 11, 2002, with respect to Appeal No. C3-01-296. Luban submits this response at the request of the Court.

REASONS FOR DENYING THE PETITION

1. The Minnesota Supreme Court correctly applied *Calder v. Jones* to the specific facts of this case.

In *Calder v. Jones*, this Court held that jurisdiction was proper in California over two Florida residents who wrote and edited an allegedly defamatory article about a California movie star. The article was published in the *National Enquirer*. The result in that case rested on defendants' own knowledge - knowledge that "California [was] the focal point of both the story and of the harm suffered." 465 U.S. at 789. With that knowledge, this Court found, the defendants targeted and "expressly aim[ed]" their actions at California. 465 U.S. at 789. That knowledge came, in part, from the fact that the *National Enquirer* had a circulation in California that was almost twice the level of the next highest state. 465 U.S. at 785. The fact that the plaintiff was a movie star in a state filled with movie stars and known as the movie star capital of the world made such knowledge by the defendants an obvious and reasonable conclusion *for that case*.

The "'effects' test is but one facet of the ordinary minimum contacts analysis, to be considered as part of the full range of the defendant's contacts with the forum." *Revell v. Lidov*, __ F.3d __, 2002 WL 31890992 at *4 (5th Cir. Dec. 31, 2002); *see also Burger King Corp. [v. Rudzewicz*, 471 U.S. 462,

478 (1985) ("The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests"). Griffis, however, reduces *Calder* to the simplistic proposition that a plaintiff can always sue a defendant in the plaintiff's home state if the defendant intentionally created a communication that the defendant knew or should have known would be likely to harm the plaintiff "where the plaintiff lives and works." *See* Griffis Petition at 3.

That is an assertion of breathtaking scope. For Griffis, apparently, litigation based upon allegedly defamatory statements could always be brought in the plaintiff's home location so long as the defendant knew where the plaintiff lived and worked. Thus, it would seem to follow that Griffis would argue that she constitutionally could have sued Luban in Alabama if Luban had made these same statements about Griffis at a gathering of amateur Egyptologists at the University of Minnesota, or to one friend over breakfast at a coffee shop in St. Paul. To suggest that *Calder* permits, much less mandates, such a result is absurd. Griffis' misinterpretation of the law would encourage vindictive plaintiffs to commence frivolous defamation actions in their home states (or countries) against their critics who live in inconveniently distant locations. Traditional notions of due process protect non-residents from such oppressive tactics by requiring minimum contacts between the defendant and the forum state.

In vacating the Alabama judgment for lack of personal jurisdiction, the Minnesota Supreme Court carefully considered the decisions of this Court, including *Calder*. Its discussion of *Calder* in the context of the circumstances of this case is best appreciated in full (*see* Pet.App.77-84), but the following passages convey its consistency with *Calder*:

> Although the Supreme Court has engaged in little further discussion of *Calder*, in one post-*Calder*

> decision the Court did make it clear that foreseeability of effects in the forum is not itself enough to justify long-arm jurisdiction. ... *Burger King Corp. [v. Rudzewicz*, 471 U.S. 462, 474 (1985)]. ... If foreseeability of injury in the forum is not enough, it follows that something more than defendant's knowledge that the plaintiff is a resident of the forum and will feel the effects of the tortious conduct there must be necessary to satisfy the effects test. [Pet.App.80]
>
> * * *
>
> The critical question in this case turns on ... whether the defendant expressly aimed the allegedly tortious conduct at the forum such that the forum was the focal point of the tortious activity. [Pet.App.81]
>
> * * *
>
> In sum, we conclude that the record does not demonstrate that Luban expressly aimed her allegedly tortious conduct at the Alabama forum ... . The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements. [Pet.App.84]

The Minnesota Supreme Court applied the same analysis of *Calder* as the Third Circuit had applied in *Imo Indus., Inc. v. Kierkert AG*, 155 F.3d 254, 259 (3d Cir. 1998). In her petition for rehearing, Griffis argued that *Imo* did not "involve a claim that the defendant was an author who defamed the plaintiff." (Pet.App.91 n.4) However, the Third Circuit explicitly applied the *Imo* analysis to defamation claims in

Remick v. Manfredy, 238 F.3d 248, 258-59 (3d Cir. 2001), reaching conclusions consistent with those of the Minnesota Supreme Court in this case. *See also English Sports Betting, Inc. v. Tostigan*, 2002 WL 461592 at *3 (E.D. Pa. March 15, 2002) ("There is a difference between tortious conduct targeted at a forum resident and tortious conduct expressly aimed at the forum. Were the former sufficient, a Pennsylvania resident could hale into court in Pennsylvania anyone who injured him by an intentional tortious act committed anywhere.").

The Minnesota Supreme Court's approach in *Luban*, like the Third Circuit's approach in *Imo* and *Remick*, is consistent with many prior cases around the country applying *Calder v. Jones* to various factual situations. *See, e.g., Young v. New Haven Advocate*, 315 F.3d 256, 262-64 (4th Cir. 2002) (facts did not support jurisdiction in libel case); *Revell v. Lidov*, __ F.3d __, 2002 WL 31890992 at *4-6 (5th Cir. Dec. 31, 2002) (facts did not support jurisdiction in libel case); *Reynolds v. Manfredy*, 23 F.3d 1110, 1119-20 (6th Cir.) (facts did not support jurisdiction in libel case), *reh'g denied, cert. denied*, 513 U.S. 962 (1994); *Wallace v. Herron*, 778 F.2d 391, 394-95 (7th Cir. 1985) (facts did not support jurisdiction in action for malicious prosecution), *cert. denied*, 475 U.S. 1122 (1986); *Hicklin Engineering, Inc. v. Aidco, Inc.*, 959 F.2d 738, 739 (8th Cir. 1992) (facts did not support jurisdiction in libel case); *Oasis v. Judd*, 132 F.Supp.2d 612, 623-24 (S.D. Ohio 2001) (facts did not support jurisdiction in libel case); *Lofton v. Turbine Design, Inc.*, 100 F.Supp.2d 404, 411 (N.D. Miss. 2000) (facts did not support jurisdiction in libel case); *Bailey v. Turbine Design, Inc.*, 86 F.Supp.2d 790, 796-97 (W.D. Tenn. 2000) (facts did not support jurisdiction in libel case); *Barrett v. Catacombs Press*, 44 F.Supp.2d 717, 729-31 (E.D. Pa. 1999) (facts did not support jurisdiction in libel case); *Bils v. Bils*, 22 P.3d 38, 39-41 (Ariz. 2001) (facts did not support jurisdiction in case for intentional infliction of emotional distress); *cf. Blumenthal v.*

Drudge, 992 F.Supp. 44, 57 (D.D.C. 1998) (facts supported personal jurisdiction in libel action in the District of Columbia because "the subject matter of the Drudge Report is directly related to the political world of the Nation's capital and is quintessentially 'inside the Beltway' gossip and rumor").

Both the Fourth Circuit and the California Supreme Court have endorsed the decision of the Minnesota Supreme Court by citing it in support of their own applications of this Court's precedents on personal jurisdiction.

In *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002), the Fourth Circuit cited the Minnesota Supreme Court's decision in *Luban* as support for its own conclusion that Virginia lacked personal jurisdiction over allegedly defamatory statements about a Virginia prison warden published in Connecticut newspapers and posted on the papers' websites. *Id.* at 264.

In *Pavlovich v. Superior Court of Santa Clara County*, 58 P.3d 2 (Cal. 2002), the California Supreme Court cited the *Luban* decision, and others, to support its statements that "most courts agree that merely asserting that a defendant knew or should have known that his intentional acts would cause harm in the forum state is not enough to establish jurisdiction under the [*Calder*]effects test," *id.* at 8, and that "virtually every jurisdiction has held that the *Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum state in addition to the defendant's knowledge that his intentional conduct would cause harm in the forum state," *id.* at 8 & n.1.

In short, contrary to the assertions in Griffis' Petition at 3, the Minnesota Supreme Court neither "rejected" *Calder* nor "created a new standard for determining the existence of personal jurisdiction over Internet authors." Like many

other courts, it simply and conscientiously applied this Court's precedents.

2. Even if this Court were to reverse the decision of the Minnesota Supreme Court, Griffis would not obtain any meaningful benefit in this case.

Granting this petition for writ of certiorari will only prolong the financial and emotional burden for Luban. Griffis herself cannot obtain any meaningful benefit in this case, even if this Court eventually were to reverse the jurisdictional decision of the Minnesota Supreme Court.

The default judgment for $25,000 was discharged in bankruptcy on March 15, 2000. (Resp.App.26) The bankruptcy court has prohibited Griffis and her attorneys from ever again seeking any penalty from Luban based upon allegedly defamatory statements she may have made through the date of the discharge. (Resp.App.40-41)

Contrary to petitioner's assertions (Griffis Petition at 17-18), the Alabama judgment was never entitled to full faith and credit with respect to its injunctive relief. In both Minnesota and Alabama, any continuing injunction is subject to modification by the rendering court, in the exercise of inherent judicial power. *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995), *rev. denied* (Minn. 1996); *Wilkinson v. State, ex rel. Morgan*, 396 So. 2d 86, 88 (Ala. 1981). Modification necessarily includes vacation of the entire injunction, upon such equitable grounds as Griffis "using the injunction to prohibit any negative speech by [Luban] whether libelous or not, including but not limited to [Luban's] legitimate criticisms of [Griffis]" and having "other remedies available should [Luban] libel or slander [Griffis]." (*See* Resp.App.5) If a foreign judgment is subject to modification by the rendering court, it need not be afforded full faith and credit. *Thompson v. Thompson*, 484 U.S. 174, 180 (1988); *Sistare v. Sistare*, 218 U.S. 1 (1910); *Matson v. Matson*,

310 N.W.2d 502, 505 (Minn. 1981); *Wood v. Wood*, 154 So. 2d 661, 663 (Ala. 1963). The broad Alabama injunction also raised substantial First Amendment issues, as the lower courts recognized. (Resp.App.5, 18)

Of course, if Luban were to make new allegedly false and defamatory statements about Griffis on the internet or elsewhere, those remarks could be the subject of a new defamation suit. Depending upon the circumstances of those remarks, Griffis might even convince the courts that the statements targeted the state of Alabama so as to support jurisdiction in that state. However, Griffis has not brought any such suit against Luban during the 20 months since the Ramsey County District Court vacated the injunction.

With so little for Griffis to hope to gain from any reversal of the decision of the Minnesota Supreme Court, one must wonder at the true motivation for this petition for a writ of certiorari. Whatever the explanation, there is no reason to use this case to address the broad issues of personal jurisdiction in the context of allegedly defamatory statements on the internet.

CONCLUSION

For the foregoing reasons, Marianne Luban respectfully requests this Court to deny the petition for a writ of certiorari.

Respectfully submitted this 7th day of February, 2003.

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STATE OF MINNESOTA

IN COURT OF APPEALS

Katherine Griffis,

Respondent, ORDER

vs. C3-01-296

Marianne Luban,

Appellant.

Considered and decided by Toussaint, Chief Judge, Amundson, Judge, and Willis, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

This appeal was filed February 15, 2001. Appellant seeks review of a December 13, 2000, order and resulting judgment entered on December 21 denying her motion to vacate a foreign judgment, granting respondent's motion for injunctive relief, and awarding attorney fees to respondent. On March 19, appellant's brief was filed.

On April 13, respondent filed a motion to dismiss the appeal because of the pendency of appellant's motion in district court to vacate the injunction pursuant to Minn. R. Civ. P. 62.02. Appellant opposes dismissal of the appeal.

An appeal may be taken from an order that grants, refuses, dissolves or refuses to dissolve, an injunction. Minn. R. Civ. App. P. 103.03(b). During the pendency of an appeal

under rule 103.03(b), the district court's authority to make an order necessarily affecting the order or judgment appealed from is not suspended. Minn. R. Civ. App. P. 108.01, subd. 1. During the appeal, the district court has discretion to suspend, modify, restore, or grant an injunction. Minn. R. Civ. P. 62.02.

The December 13 order granting respondent's motion for injunctive relief is immediately appealable. The district court retains jurisdiction to rule on appellant's motion to vacate the injunction despite the pendency of the appeal. Respondent has not shown a basis to dismiss the appeal.

IT IS HEREBY ORDERED:

1. Respondent's motion to dismiss the appeal is denied.

2. Pursuant to this court's April 18, 2001, order, respondent's brief is due on May 7, 2001.

3. The clerk of the appellate courts shall provide copies of this order to the Honorable Lawrence D. Cohen, counsel of record, and the trial court administrator.

Dated: April 24, 2001

BY THE COURT

[s] Edward Toussaint
Chief Judge

AW/dr

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

Katherine Griffis,

Plaintiff,

vs.

Marianne Luban,

Defendant.

Dist. Court File No. C1-98-4573

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER VACATING PLAINTIFF'S PERMANENT INJUNCTION

This matter came on for hearing before the Honorable Lawrence D. Cohen, Chief Judge of Ramsey County District Court on March 21, 2001, upon Defendant's Motion to Vacate Plaintiff's Temporary Injunction.

Ralph J. Overholt appeared on behalf of Plaintiff.

John P. Borger appeared on behalf of Defendant.

The matter was brought before the Court upon Defendant's motion to vacate an injunction pending appeal issued by this Court on December 13, 2000 and the Judgment entered thereon on December 21, 2000.

Based on all the files, records and proceedings herein, and upon arguments of counsel, this Court makes the following:

FINDINGS OF FACT

1. Plaintiff Katherine Griffis resides in Alabama. Defendant Marianne Luban resides in Minnesota.

2. Plaintiff sued Defendant in Alabama for defamation, alleging that Internet communications by Defendant damaged Plaintiff in Alabama.

3. Defendant did not answer and a default judgment was entered against her in Alabama on January 14, 1998. In addition to a money judgment, the circuit court ordered that Defendant be permanently enjoined from publishing in any form including, but not limited to the Internet, any statements asserting or implying:

A. that Plaintiff is a liar;

B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;

D. that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

E. that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

F. that Plaintiff does not possess a Juris Doctor degree;

G. that Plaintiff is not engaging in a legitimate consulting business.

4. On December 13, 2000, this Court denied Defendant's motion to vacate the Alabama judgment and granted Plaintiff's motion for injunctive relief.

5. On March 21, 2001, there was a hearing before this Court on the merits of the injunction. The purpose of that hearing was not simply applying full faith and credit to the Alabama

injunction, rather that the Court take an independent look at the merits of the injunctive relief and the Constitutionality of such merits.

6. Defendant subsequently declared Bankruptcy and discharged Plaintiffs monetary judgment at that proceeding.

7. Plaintiff is using the injunction to prohibit any negative speech by Defendant whether libelous or not, including but not limited to Defendant's legitimate criticisms of Plaintiff.

8. This injunction is a prior restraint on free speech.

9. Plaintiff has other remedies available should Defendant libel or slander Plaintiff.

CONCLUSIONS OF LAW

1. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right. MN Const. art. 1, § 3.

2. During an appeal, the District Court has discretion to suspend, modify, restore, or grant an injunction. Minn. R. Civ. P. 62.02. Any continuing injunction is subject to modification by the rendering court, because "courts have the inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to do so". *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995).

3. The Uniform Enforcement of Foreign Judgments Act gives this Court the same power to vacate, modify, or enforce orders or judgments from other states as it does its own orders and judgments. See Minn. Stat. § 548.27 (2000).

4. All speech restricting injunctions are prior restraints in the literal sense of 'administrative and judicial orders forbidding certain communications when issued in advance

of the time that such communications are to occur'. *Alexander v. United States*, 509 U.S. 544, 550 (1993).

ORDER

Based upon the Findings of Fact, Conclusions of Law, files, records and proceedings, and upon arguments of counsel, this Court HEREBY ORDERS:

1. The injunction entered against Defendant Marianne Luban and in favor of Plaintiff Katherine Griffs, as reflected in the January 14, 1998, order of the Alabama Circuit Court for Jefferson County, as incorporated in this Court's order dated December 13, 2000, and judgment entered thereon December 21, 2000, be **VACATED** in all respects.

LET THE JUDGEMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

/s/_____

Dated: June 13, 2001 The Honorable Lawrence D.Cohen

Chief Judge of District Court

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2000).

STATE OF MINNESOTA
IN COURT OF APPEALS
CX-01-1350

Katherine Griffis,
Appellant,

vs.

Marianne Luban,
Respondent.

Filed March 5, 2002
Reversed and remanded
Halbrooks, Judge

Ramsey County District Court
File No. C1984573

Peter Erlinder, 566 Marshall Avenue, St. Paul, MN 55102 (admitted pro hac vice); and

Ralph Overholt, PO Box 5331, Hopkins, MN 55343 (for appellant)

John P. Borger, C. David Flower, Faegre & Benson, 2200 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Stoneburner, Presiding Judge, Shumaker, Judge, and Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Katherine Griffis challenges the district court's order vacating the temporary injunction issued by an Alabama court that prohibited respondent Marianne Luban from making certain defamatory statements about Griffis. Griffis contends that the district court exceeded its authority under Minn. R. Civ. P. 62.02 and erred as a matter of law in vacating the injunction while an appeal was pending and there was no finding of changed circumstances. Griffis argues that the injunction does not violate the First Amendment because it was not overbroad on its face and because the prohibited statements have been found to be defamatory by a court of competent jurisdiction. Because the Constitution permits injunctions against defamatory speech, we reverse and remand to the district court for a determination of the proper scope of the injunction based on the findings made by the issuing court.

FACTS

This appeal marks the third time that this matter has been before this court. Because the underlying facts were presented in *Griffis v. Luban*, 633 N.W.2d 548 (Minn. App. 2001), *review granted* (Minn. Nov. 13, 2001), they will not be repeated in full here.

Procedurally, Griffis, an Alabama resident, brought a defamation claim in Alabama state court against Luban, a Minnesota resident. Luban failed to answer the complaint or make an appearance and the court granted Griffis a $25,000 default judgment and injunctive relief. The injunction prohibited Luban from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:

A. that [Griffis] is a liar;

B. that [Griffis] is a phony;

C. that [Griffis] is a con-artist or scam-artist;

E.[sic] that [Griffis] has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

F. that [Griffis] is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

G. that [Griffis] does not possess a Juris Doctor degree;

H. that [Griffis] is not engaging in a legitimate consulting business.

Griffis filed the judgment in Ramsey County District Court pursuant to the Uniform Enforcement of Foreign Judgments Act and Luban moved to vacate the judgment on the ground that the Alabama court lacked personal jurisdiction over her. A referee initially granted Luban's motion, but found, upon reconsideration, that the Alabama court had personal jurisdiction over Luban.

On appeal, this court vacated the referee's decision because it had not been reviewed or signed by a district court judge. *Griffis v. Luban*, 601 N.W.2d 712, 713 (Minn. App. 1999). We did not reach the merits of the dispute.

Luban renewed her motion to vacate the Alabama judgment on the grounds of lack of personal jurisdiction and violation of the First Amendment. Griffis moved to enforce the injunction. Based on its conclusion that Alabama's long-arm statute gave it personal jurisdiction over Luban, the district court gave the judgment full faith and credit without deciding the First Amendment issue.

Luban appealed on the personal jurisdiction issue to this court and moved the district court pursuant to Minn. R. Civ.

P.62.02 to vacate the injunction as violative of the First Amendment. In response, Griffis brought a motion to dismiss Luban's appeal while the matter was still pending before the district court. We denied Griffis's motion to dismiss because we concluded that "[t]he district court retains jurisdiction to rule on [Luban's] motion to vacate the injunction despite the pendency of the appeal." *Griffis v. Luban*, No. C3-01-296 (Minn. App. Apr. 24, 2001) (order).

Following a hearing, the district court vacated the injunction on the ground that it violated the First Amendment protection against prior restraint of speech. Griffis appealed from the district court's order before this court had issued its decision on Luban's challenge to the district court's earlier conclusion that personal jurisdiction existed. We affirmed the district court on its ruling that Alabama had personal jurisdiction over Luban. *Griffis*, 633 N.W.2d at 553. Griffis now challenges the district court's order vacating the injunction.

DECISION

I.

Griffis contends that the district court exceeded its authority under Minn. R. Civ. P. 62.02 by vacating an injunction in response to a motion brought by Luban, who opposed the injunction, after Luban had filed a notice of appeal from the district court's order that personal jurisdiction existed. Griffis further argues that the district court abused its discretion by dissolving the injunction in the absence of changed legal or factual circumstances.

This court reviews interpretations of the rules of civil procedure de novo. *Jostens, Inc. v. Federated Mut. Ins. Co.*, 612 N.W.2d 878, 883 (Minn. 2000). Minn. R. Civ. P. 62.02 provides as follows:

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

The district court concluded that its authority to modify the injunction while an appeal was pending was derived from rule 62.02 and the court's "inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to do so." *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995) (quoting *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis County*, 298 Minn. 306, 327-28, 215 N.W.2d 814, 829 (1974)).

In *Jacobson*, this court held that a district court retains jurisdiction to vacate an injunction under its inherent powers of equity and Minn. R. Civ. P. 60.02(e) when a sufficient change in circumstances has made the continued application of the injunction inequitable. *Id.* In that case, we affirmed the district court's order vacating an injunction that prohibited enforcement of a county ordinance banning nude dancing in bars on the ground that the Minnesota Supreme Court upheld the constitutionality of a similar ordinance seven years after the *Jacobson* injunction was issued. *Id.* at 626-27. The supreme court's ruling in a later case involving a challenge to the constitutionality of a similar ordinance constituted a sufficient change in legal circumstances to warrant vacating the injunction. *Id.* at 626. But *Jacobson* is not applicable to the facts and procedural posture of this case, which involves an order to vacate issued while an appeal was pending and in the absence of any findings of changed legal circumstances.

Luban argues that we expressly acknowledged the propriety of her rule 62.02 motion when we stated, "[t]he district court retains jurisdiction to rule on [Luban's] motion to vacate the injunction despite the pendency of the appeal." *Griffis v. Luban*, No. C3-01-296 (Minn. App. Apr. 24, 2001) (order). But the issue then before us was whether the appeal to this court and the motion in the district court could go forward simultaneously. Our order did not determine the motion's propriety.

By its terms, Minn. R. Civ. P. 62.02 does not allow a court to vacate an injunction, but only to "suspend, modify, restore, or grant an injunction." The rule's intent is to give courts a mechanism to a stay a judgment and thereby preserve the status quo pending appeal. *See* 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 62.5 (1998) (stating that the rule seeks to secure the rights of the adverse party, or appellee). Here, rather than preserving the status quo, the district court made a ruling akin to a reversal on a motion for reconsideration. We conclude that rule 62.02 does not give the district court authority to vacate the injunction and the court erred in its decision to do so.

II.

Griffis argues that the district court also erred in finding that the injunction is a prior restraint on free speech being used by Griffis to prohibit any negative speech, including legitimate criticism, by Luban. Whether an injunction violates the Constitution is a legal issue, which this court reviews de novo. *See State v. Wicklund*, 589 N.W.2d 793, 797 (Minn. 1999) (trial court's conclusions regarding free speech protections in the Minnesota Constitution reviewed do novo).

Griffis contends that *Advanced Training Sys., Inc. v. Caswell Equip. Co.*, 352 N.W.2d 1 (Minn. 1984), permits an injunction when there has been a judicial determination that

the enjoined statements are defamatory. Luban counters that, starting with *Near v. Minnesota*, 283 U.S. 697, 51 S. Ct. 625 (1931), courts have generally prohibited these "prior restraints" of speech. Further, she asserts that the narrow exception in *Advanced Training* is inapplicable because this dispute did not arise in a commercial context, there was no full adversarial hearing, and the injunction is not tailored to precise statements.

Near and its progeny dealt with a number of injunctions that the U.S. Supreme Court held to be unconstitutional as "prior restraints" of speech. *Near*, 283 U.S. at 713-23, 51 S. Ct. at 630-33; *see Okla. Publ'g Co. v. Dist. Court*, 430 U.S. 308, 311-12, 97 S. Ct. 1045, 1047 (1977); *N.Y. Times Co. v. United States*, 403 U.S. 713, 719-20, 91 S. Ct. 2140, 2144 (1971); *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419-20, 91 S. Ct. 1575, 1578 (1971). But while "[t]hese cases may once have stood for the proposition that any injunction against speech activity was a 'prior restraint' on speech," the Court later stated that the "special vice of a prior restraint is that communication will be suppressed * * * before an adequate determination that it is unprotected by the First Amendment." *Advanced Training*, 352 N.W.2d at 11 (quoting *Pittsburgh Press Co. v. Comm'n on Human Relations*, 413 U.S. 376, 390, 93 S. Ct. 2553, 2561 (1973)).

In *Pittsburgh Press*, the Court upheld an order that prohibited a newspaper from listing help-wanted advertisements in gender-specific columns, e.g., "Male Help Wanted." 413 U.S. at 390, 93 S. Ct. at 2561. In doing so, the Court indicated there was an "adequate determination" when the order was (1) based on a continuing course of conduct so that the court did not have to speculate as to its effects, (2) not in effect until after the court determined the character of the speech, and (3) clear and narrowly drawn to enjoin no more speech than necessary. *Id.* Similarly, in *Advanced Training*, our supreme court found that an

injunction against a business's disparaging comments was constitutionally permissible because (1) the oft-repeated comments allowed the court to "gauge [their] actual impact," (2) the court held adversarial proceedings to determine the comments' character, and (3) the injunction was limited to the precise statements found to be libelous. *Advanced Training*, 352 N.W.2d at 11. Although *Advanced Training* arose in a commercial context, the court's analysis can be applied more broadly. Therefore, we hold that an injunction is not an unconstitutional "prior restraint" if it is (1) based on a sufficient record, (2) issued after a judicial determination that the speech is in an unprotected class, and (3) narrowly tailored to enjoin only the offending speech.

A. Sufficient record.

The first factor requires there to be a sufficient record of the speech at issue to permit a court to adequately gauge its nature and impact. In *Pittsburgh Press*, the record was sufficient to avoid speculation about the speech when it included newspaper clippings from one day's edition that enabled the court to conclude that there had been 248,000 similar help-wanted advertisements. 413 U.S. at 379, 93 S. Ct. at 2555-56. In *Advanced Training*, the defendant circulated at least five different "bulletins" and wrote letters over a number of years from which the court and jury had ample opportunity to assess the nature and impact of the speech. 352 N.W.2d at 11. Here, the Alabama court identified at least 100 communications that formed the basis of Griffis's complaint. In light of the governing cases, this is a sufficient record from which to gauge the nature and impact of the speech in issue.

B. Judicial determination.

The second factor requires that there be a judicial determination as to the quality of the allegedly unprotected speech. In describing this requirement, *Advanced Training*

used terms such as "full adversarial proceedings," "full and fair adversary proceeding, and "full jury trial." 352 N.W.2d at 11. Because these terms lack legal precision, we must look to the genesis of the "prior restraint" doctrine, and the cases that followed, to determine the character of this requirement.

In *Pittsburgh Press*, the U.S. Supreme Court quoted Blackstone when describing the common law underpinnings against prior "restraints:"

> To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, *** is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government.

Pittsburgh Press, 413 U.S. at 391, 93 S. Ct. at 2561 (quotation omitted). From this, it is apparent that the doctrine seeks to avoid the arbitrary and capricious exercise of censorship that would exist without "an adequate determination that [speech] is unprotected by the First Amendment." *Id.*

This concern is also evident in the Court's cases involving the licensing of motion pictures and other media. *See S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 560-61, 95 S. Ct. 1239, 1247-48 (1975). In this realm, the Court has repeatedly stated that

> a system of prior restraint "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system."

Id. at 560, 95 S. Ct. at 1247 (quoting *Freedman v. Maryland*, 380 U.S. 51, 58, 85 S. Ct. 734, 739 (1965)). To that end, the Court invalidates such "prior restraints" unless (1) the burden of instituting and proving the case lies with the censor, (2) any

restraint prior to judicial review serves only to maintain the status quo, and (3) the judicial determination is prompt. *Id.* Again, it is apparent that the constitutional concerns arise only when a restraint is imposed without a proper process. In light of this common concern, we conclude that a court makes "an adequate determination" when it employs due process before enjoining any speech.

The issue before us is whether there was due process in this instance. The U.S. Supreme Court stated:

> Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance * * *.

Boddie v. Connecticut, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971). Likewise, the Minnesota Supreme Court has held that a default judgment satisfies due process when the court has jurisdiction over both the offense and the defendant and the resulting trial is not merely a sham or pretense. *In re Children of Coats*, 633 N.W.2d 505, 512 (Minn. 2001).

Here, Luban was subject to personal jurisdiction in the Alabama court and she received proper notice. *Griffis v. Luban*, 633 N.W.2d 548, 552-53 (Minn. App. 2001), *review granted* (Minn. Nov. 13, 2001). There is nothing in the record to indicate that the proceeding was a mere sham or pretense. To the contrary, the record shows the Alabama court reviewed the evidence and made detailed findings from which it crafted its injunction. Therefore, we find that the court employed due process and thus made an "adequate determination" before issuing the injunction.

C. **Narrowly tailored.**

Advanced Training requires that any injunction against speech be "limited to the precise statements found libelous." 352 N.W.2d at 11. Griffis, herself, concedes that an injunction must be narrowly tailored so as to enjoin only unprotected speech. The Alabama court found that Luban made the following false statements:

A. She has called [Griffis] a liar;

B. She has alleged, directly and by implication, that [Griffis] secured membership in the International Association of Egyptologists and placement on other lists of Egyptologists or membership in other Egyptological organizations by misrepresenting her qualifications when applying to those organizations and lists;

C. She claimed that [Griffis] was not affiliated with the University of Alabama at Birmingham and that she had not taught courses in Egyptology in the Special Studies Department of the University of Alabama at Birmingham;

D. She claimed that [Griffis] lied when she identified herself as having a Juris Doctor degree;

E. She alleged that the consulting business [Griffis] conducts is not legitimate; and

F. She has referred to [Griffis] as a "con-artist," a "scam-artist" and a "phony."

Accordingly, the Alabama court enjoined Luban from saying or implying the following:

A. that [Griffis] is a liar;

B. that [Griffis] is a phony;

C. that [Griffis] is a con-artist or scam-artist;

E.[sic] that [Griffis] has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;

F. that [Griffis] is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;

G. that [Griffis] does not possess a Juris Doctor degree;

H. that [Griffis] is not engaging in a legitimate consulting business.

The issue before us is whether the injunction is sufficiently narrow so as not to prohibit non-defamatory speech. For instance, the Alabama court found that Luban defamed Griffis by calling her "a liar" with respect to Griffis's postings to an Egyptology newsgroup. As a result, the court enjoined Luban from saying "that [Griffis] is a liar." But because this provision is not restricted to any particular context, i.e., postings to the Egyptology newsgroup, the injunction has the effect of prohibiting Luban from calling Griffis "a liar" even if to do so in another context would *not* be defamatory. For example, the injunction prohibits Luban from calling Griffis "a liar" even if Griffis were to say that "John F. Kennedy was never President of the United States." On its face, the injunction prohibits speech even if non-defamatory and protected by the First Amendment. *See Bebo v. Delander*, 632 N.W.2d 732, 739 (Minn. App. 2001) (holding that one element of defamation is that the statement be false).

We conclude that the injunction is overbroad because it enjoins Luban from making certain statements regardless of the context. As a result, because portions of the injunction are not limited to the precise statements found by the Alabama court to be defamatory, it violates the "prior restraint" doctrine.

We reverse the vacation of the injunction and remand to the district court to narrow the scope of the injunction so that it restricts only those statements found to be defamatory and does not extend to non-defamatory speech.

Reversed and remanded.

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Katherine Griffis,

Plaintiff,

v.

Marianne Luban,

Defendant.

Court File: C1-98-4573

Plaintiff's Motion for Injunctive Relief: the Issuance of an Order for a Rule to show Cause; and, For an Order Holding Defendant on Contempt of Court

---

1. Pursuant to the Full Faith and Credit Clause of the United States Constitution and the laws of the United States and State of Minnesota, in May 1998, Plaintiff caused a valid, certified judgement of the State of Alabama, including a Permanent Injunction, ordering Defendant to refrain from publishing defamatory statements regarding Plaintiff, to be filed in Ramsey County District Court, for the purposes of securing the relief granted in the judgement. Plaintiff seeks enforcement of that Injunction.

2. Said Injunction of January 14, 1998 provides that:

1. That defendant be, and hereby is, permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:

A. that Plaintiff is a liar;

B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;

E. *that Plaintiff has falsified her credentials in order to gain admission to any organization, or inclusion on any list, of Egyptologists;*

F. *that Plaintiff is not affiliated with the University of Alabama at Birmingham or has not taught courses in Egypt or Egyptology through that affiliation;*

G. *that Plaintiff does not possess a Juris Doctor degree;*

H. *that Plaintiff is not engaging in a legitimate consulting business.*

2. **That a violation of the provisions of this injunction shall constitute a contempt of this Court by Defendant. (emphasis added)**

3. Thereafter, Defendant moved for the Alabama judgement to be set aside, alleging a lack of personal jurisdiction over Defendant. Referee Manuel Cervantes, of Ramsey County District Court, upheld the personal jurisdiction of the Alabama courts. (See, Referee Findings, Attached). The Findings of the Referee were set aside by the Minnesota Court of Appeals for procedural reasons, unrelated to the issue of personal jurisdiction. See Griffis v Luban (attached)

4. Plaintiff seeks *only* enforcement of the injunctive relief in this matter and that and Order for a Rule to Show Cause issue to require Defendant to show why she should not be held in contempt of the valid Order of the Alabama Court.

5. In an effort to escape the financial responsibility also imposed by the Alabama Courts, in addition to the Permanent Injunction, Defendant has filed for bankruptcy protection (listing the $25,000 Alabama judgement as a valid

debt dischargeable in the bankruptcy, thus impliedly acknowledging the validity of the judgement.)

6. Plaintiff has not contested the discharge of the monetary judgement through the bankruptcy proceeding, but continues to assert her absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts, pursuant to a valid judgement and final order.

7. Pursuant to the injunctive relief granted in the Alabama judgement, Defendant has been under an obligation to refrain from publishing defamatory statements concerning plaintiff, since the entry of the judgement in Alabama on January 14, 1998.

8. On numerous occasions following entry of the Alabama judgement on January 14, 1998, Defendant has violated the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Table of 25 selected Internet postings, chosen from more than 179 Internet posts and phone calls totaling more than 454 individual violations of the Injunction, incorporated herein by reference.)

9. On numerous occasions, following the filing of the Alabama injunction in the District Court of Ramsey County in May, 1998, Defendant has continued to violate the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Affidavit, incorporated herein.)

10. The violations of the injunction include, but are not limited to, ninety-nine (99) separate incidents in 25 separate published statements, to wit:

A. Thirty-seven (37) violations of Injunction paragraph 1A.

B. Twenty-two (22) violations of Injunction paragraph 1B.

C. Sixteen (16) violations in Injunction paragraph 1C.

D. Eight (8) violations of Injunction paragraph 1E.

E. Five (5) violations of Injunction paragraph 1F.

F. Two (2) violations of Injunction paragraph 1G.

G. Three (3) violations of Injunction paragraph 1H

10. *[sic]* Upon information and belief, in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant has ignored, and will continue to ignore, the terms of the Injunction and Plaintiff will continue to suffer irreparable personal and professional harm that the injunctive relief sought to prevent.

WHEREFORE, plaintiff moves, this Honorable Court for: enforcement of the Permanent Injunction issued by the Courts of Alabama; an Order for a Rule to Show Cause why Defendant should not be held in contempt of court; and, for an ORDER holding Defendant in Contempt of Court and imposing sanctions, to wit:

(1) a fine of $1,000 for each violation of the terms of the injunction, from the date of service of the Alabama judgement upon Defendant up to an including the date of the Order entered by this Court, but not less than ninety-nine thousand dollars ($99,000), payable to Plaintiff, the District Court of Ramsey County, or a charity of the Plaintiff's choice;

(2) surrender of Defendant's computer and modem to the Court to prevent continuing and future violations of the injunction;

(3) payment of fees, costs and attorneys fees associated with Plaintiffs attempts to secure enforcement of the Alabama injunction by resort to the Courts of Minnesota, arising from Defendant's continuing violations of the Permanent Injunction;

(4) compliance with such other relief as this Court deems just and proper to secure compliance with the injunctive relief ordered by the Courts of Alabama; and,

(5) in the event that the Defendant fails to comply with any of the above by a date certain, as ordered by this Honorable Court, Defendant shall be incarcerated in the Ramsey County Detention Center until such time as Defendant complies with the terms of the January 14, 1998 Permanent Injunction and other Orders of this Court.

Respectfully submitted:

_____ Dated
Peter Erlinger, III. No. 3124291
566 Marshall Ave.
St. Paul, M 55120
(651) 290-6384

_____ Dated:
Ralph Overholt, #212404
P.O. Box 5331
Hopkins, MN 55343
(612) 930-3204

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re	MARIANNE LUBAN, a/k/a MARIANNE WELLS,	BKY 99-36147
	Debtor.	Chapter 7
MARIANNE LUBAN,		ADV 00-3163
	Plaintiff,	
v.		**ORDER**
KATHERINE GRIFFIS, C. PETER ERLINDER, and RALPH J. OVERHOLT,		
	Defendants.	

At St. Paul, Minnesota.

This matter came before the Court on the parties' cross motions for summary judgment. Ralph J. Overholt appeared *pro se* and on behalf of the defendant, Katherine Griffis.[1] Marianne Luban appeared, *pro se*.

The Court has jurisdiction over this matter as a core proceeding under 28 U.S.C. §§ 157(b)(2)(O), and § 1334. Based upon the proceedings and all the relevant files and records contained herein, and for the reasons set forth below,

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[1] The "Defendant's" brief submitted regarding these cross motions for summary judgment apparently represents the arguments of and is relied up by all three defendants.

the Court now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I. BACKGROUND

In early 1998, the defendant Katherine Griffis, obtained a default judgment and injunction in Jefferson County Circuit Court in Alabama against the plaintiff, Marianne Luban. The default judgment was in the amount of $25,000.00, for damages arising from allegedly defamatory statements against Griffis posted on the Internet by Luban. The injunction was a prohibition against any further posting of such remarks. Luban challenged the Alabama judgment and injunction in Minnesota state courts,[1] and apparently litigation challenging the constitutionality and jurisdiction is still underway.

On December 16, 1999, Luban filed a bankruptcy petition under Chapter 7. In her schedules, Luban listed Griffis as a creditor in the amount of $25,000.00. Griffis brought a motion for relief from stay in order to enforce the Alabama injunction in Minnesota state court proceedings she intended to initiate. This Court denied the motion for relief on February 9, 2000. Luban received a discharge in her Chapter 7 case on March 15, 2000, including the debt to Griffis, the

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[1] Initially, the district court by referee vacated the judgment and injunction on August 31, 1998. On March 18, 1999, however, the order was amended and the Alabama judgment was affirmed. Thereafter the Minnesota Court of Appeals vacated the docketing of the Alabama judgment as part of a determination to vacate all referees' orders that had not been co-signed by a district court judge. The Alabama judgment was subsequently re-docketed on February 23, 2000, during which time the automatic stay applied in Luban's bankruptcy case. The re-docketing by the Ramsey County District Court was part of the process of re-issuing valid, co-signed referee judgments and not at the request or under the control of any of the defendants. Accordingly, there was no § 362 stay violation by the defendants and no further discussion of that question is required.

dischargeability of which was never contested in an adversary proceeding or otherwise.

On April 17, 2000, Griffis initiated litigation in Ramsey County District Court purportedly to enforce the Alabama injunction, but also seeking $99,000.00 in damages and a permanent injunction against Luban from all use of the Internet and or incarceration of Luban for alleged violations of the injunction between May, 1998, and October, 1999. This motion is the central subject of this adversary proceeding in bankruptcy.

The motion filed by Griffis and her attorneys, provides in relevant part:

> Motion for Injunctive Relief: The Issuance of an Order for a Rule to Show Cause; and, For an Order Holding Defendant in Contempt of Court
>
> 1. Pursuant to the Full Faith and Credit Clause ... a valid, certified judgment of the State of Alabama, including a Permanent Injunction, ordering Defendant [Luban] to refrain from publishing defamatory statements regarding Plaintiff [Griffis] ... filed in Ramsey County District Court, for the purposes of securing the relief granted in the judgement. Plaintiff seeks enforcement of that Injunction.
>
> 2. Said Injunction ... provides that:
>
>   1. The defendant be ... permanently enjoined from publishing in any form including, but not limited to, the Internet, World Wide Web, and E-mail, any statement asserting or implying:
>
>   A. That Plaintiff is a liar:
>   B. that Plaintiff is a phony;

C. that Plaintiff is a con-artist or scam-artist;
E. that Plaintiff has falsified her credentials ...
F. that Plaintiff is not affiliated with the University of Alabama ...
G. that Plaintiff does not possess a Juris Doctor degree;
H. that Plaintiff is not engaging in a legitimate consulting business.

2. That a violation of the provisions of this injunction shall constitute a contempt of this Court by Defendant.

4. Plaintiff seeks *only* enforcement of the injunctive relief in this matter and that and [sic] Order for a Rule to Show Cause issue to require Defendant to show why she should not be held in contempt of the valid Order of the Alabama Court.

5. In an effort to escape the financial responsibility also imposed by the Alabama Courts, in addition to the Permanent Injunction, Defendant has filed for bankruptcy protection (listing the $25,000 Alabama judgement as a valid debt dischargeable in the bankruptcy, thus impliedly acknowledging the validity of the judgement.)

6. Plaintiff has not contested the discharge of the monetary judgement through the bankruptcy proceeding, but continues to assert her absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts, pursuant to a valid Judgement and final order.

7. Pursuant to the injunctive relief granted in the Alabama Judgement, Defendant has been under an obligation to refrain from publishing defamatory statements concerning Plaintiff...

8. On numerous occasions following entry of the Alabama judgement on January 14, 1998, Defendant has violated the terms of the judgement by publishing defamatory statements attacking the veracity and professional standing of Plaintiff. (See the attached Table of 25 selected Internet postings, chosen from more than 179 Internet posts and phone calls totaling more than 454 individual violations of the Injunction ...)

9. On numerous occasions, following the filing of the Alabama injunction in the District Court of Ramsey County in May, 1998, Defendant has continued to violate the terms of the judgement ...

10. The violations of the injunction include, but are not limited to, ninety-nine (99) separate incidents in 25 separate published statements, to wit: ...

10. [sic] Upon information and belief, in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant has ignored, and will continue to ignore, the terms of the Injunction and Plaintiff will continue to suffer ...

WHEREFORE, plaintiff moves ... for: enforcement of the Permanent Injunction issued by the Courts of Alabama; and Order for a Rule to Show Cause why Defendant should not be held in

contempt of court; and, for an ORDER holding Defendant in Contempt of Court and imposing sanctions, to wit:

(1) a fine of $1,000 for each violation of the terms of the injunction, from the date of service of the Alabama judgement upon Defendant up to an [sic] including the date of the Order entered by this Court, but not less than ninety-nine thousand dollars ($99,000), payable to Plaintiff, the District Court of Ramsey County, or a charity of the Plaintiff's choice;

(2) surrender of Defendant's computer and modem ...;

(3) payment of fees, costs and attorney fees associated with Plaintiffs attempts to secure enforcement of the Alabama injunction by resort to the Courts of Minnesota, arising from Defendant's continuing violations...;

(4) compliance with such other relief as this Court deems just and proper ... and;

(5) in the event that the Defendant fails to comply with any of the above by a date certain, as ordered by this Honorable Court, Defendant shall be incarcerated in the Ramsey County Detention Center until such time as Defendant complies with the terms of the January 14, 1998 Permanent Injunction and other Orders of this Court.

On May 15, 2000, the Ramsey County court held a hearing on the motion to enforce the injunction and seeking a finding of contempt, and on Luban's numerous cross motions including to vacate, to compel discovery, for an order to show cause, and for sanctions. On July 26, 2000, the

state court apparently held another hearing on these matters and from the bench granted the motion to enforce the injunction on the basis that the Alabama injunction should be given full faith and credit in Minnesota. In a written order dated December 13, 2000, the court reiterated the same. No violations of the injunction were found, however, and no damages therefrom were awarded.

On August 29, 2000, Luban filed this adversary proceeding. After amending her complaint and following several hearings, Luban narrowed down her complaint to allege that the motion made by Griffis and her attorneys to the Ramsey County District Court on April 17, 2000, was an attempt to collect a discharged debt in violation of 11 U.S.C. § 524(a). Luban contends that each of the ninety-nine purported violations of the Alabama injunction alleged in the motion to hold Luban in contempt of court were pre-petition incidents, and that therefore the defendants' conduct in seeking damages for those pre-petition acts constitutes a violation of the discharge injunction under 11 U.S.C. § 524(a)(2). The Court agrees.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the record, viewed in a light most favorable to the non-moving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Rabushka v. Crane Co., 122 F .3d 559, 562 (8th Cir. 1997); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Fed.R.Civ.P. 56(c).

In deciding whether a defendant is entitled to summary judgment, the Court views the record in a light most favorable to the plaintiff, the nonmoving party, affording the plaintiff the benefit of all reasonable inferences. See Tlamka v. Serrell, 2001 WL 285149, *2 (8th Cir.); Lambert v. City of Dumas, 187 F.3d 931, 934-35 (8th Cir. 1999).

In this case, the parties agree that the central facts are not disputed. The sole issue is whether the motion brought post-petition and post-discharge by the defendants in Ramsey County constituted an attempt to collect a discharged debt. The document filed in the state court speaks for itself, and this Court finds its patent intention is also otherwise well-supported by the record.

III. DISCUSSION

Violation of § 524(a)(2)

"[A] discharged debtor is entitled to a 'fresh start,' ... [and] a creditor's treatment of a discharged debtor must conform to the provisions of the bankruptcy law." See Olson v. McFarland Clinic. P.C. (In re Olson), 38 B.R. 515, 518 (Bankr. N.D. Iowa 1984). "A discharged debtor enjoys the benefit of 11 U.S.C. § 524." Id. Section 524(a)(2) provides:

> (a) A discharge in a case under this title –
>
> (1) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived ...

See 11 U.S.C. § 524(a)(2).

"Section 524(a)(2) was enacted to continue post-discharge the temporary stay imposed by § 362 when a case is commenced. It replaces the automatic stay with a permanent injunction against enforcement of all discharged debts upon entry of the discharge." See Waswick v. Stutsman County Bank, 212 B.R. 350, 352 (Bankr. D. N. D. 1997) (citation omitted).

"Willful violation of the injunction imposed by § 524(a)(2) will warrant a finding of civil contempt." Id. "[T]o

find one in civil contempt of the § 524(a)(2) injunction, the burden rests with the movant to show by clear and convincing evidence that the offending creditor or entity had knowledge of the discharge and willfully violated it by continuing with the activity complained of [sic]." Id. (citations omitted). The requisite knowledge must be actual. Id. at 353 (citation omitted).

A review of the motion filed by the defendants against Luban in Ramsey County District Court on April 17, 2000, a little more than a month following Luban's discharge in bankruptcy, demonstrates that the plain intention of the defendants was to both enforce the Alabama injunction and to either extract money damages from Luban for violations of the injunction or persuade the state court to incarcerate her for her purported contempt of the court. The motion's caption expressly states the relief sought to include "an Order Holding Defendant [Luban] in Contempt of Court."

Paragraph 4 of the motion is an apt illustration of the defendants' attempt to characterize the motion as only pertaining to future conduct yet simultaneously asking for damages. The provision emphasizes that Griffis "seeks *only* enforcement" of the injunction yet the same sentence immediately thereafter requests an order to show cause why Luban should not be held in contempt for violating the injunction.

The defendants have offered in explanation only that there was no intention to violate the discharge injunction; that wasn't what the motion was meant to do – it was merely to enforce the state court injunction, and the listed alleged violations were to demonstrate that the injunction had been violated since the time of its issuance. The requested damages and the contempt order sought were, the defendants opine, only intended on a going forward basis, to be applied to future violations. Nevertheless, this

interpretation is at odds with a plain interpretation of the unambiguous language of the offending motion. Even the defendants concede that "maybe" the way that the motion was drafted resulted in a violation of the discharge injunction.

In spite of the repeated assurances throughout the motion that the proceeding was brought only to secure the injunctive relief awarded, such as referring to losing the $25,000 judgment by virtue of Luban's bankruptcy but maintaining the "absolute right to seek enforcement of the non-monetary injunctive relief granted by the Alabama Courts," (paragraph 6), the motion nevertheless returns to its paramount theme of the necessity of contempt sanctions to secure Luban's compliance with the injunction. For example, the second paragraph 10 contends that the only way Luban will be compelled to observe the injunction is in the event of court ordered consequences against her: "in the absence of contempt of court sanctions enforcing the injunctive relief required by the Alabama judgement, Defendant [Luban] has ignored, and will continue to ignore, the terms of the Injunction."

Moreover, the record before this Court is replete with evidence of careful planning by the defendants. Notice of Luban's discharge, its import, and the processes of bankruptcy and all its implications, are nonissues in this case. There was extensive communication between Griffis and her lawyers throughout the course of Luban's bankruptcy proceedings. It is well documented that much thought was given in determining precisely what route to take to secure an effective injunction against Luban and to obtain some form of retribution.

Were any of the alleged violations noted in the motion post-petition incidents, the defendants might have some margin of credibility. However, of the ninety-nine

purported violations of the Alabama injunction, listed in detail as part of the motion, not a single one is a post-petition occurrence. Every violation complained of in the April 17, 2000, motion is pre-petition conduct, and as such any debt therefor to Griffis was discharged in Luban's bankruptcy on March 15, 2000. Griffis had an opportunity, as this Court expressly stated at the hearing on her motion for relief from stay, to challenge the dischargeability of the judgment and related debts in an adversary proceeding before this Court. Griffis and her attorneys deliberately decided to wait until the discharge was entered and pursue Luban thereafter in state court in an attempt to resurrect her liability for discharged debt under cover of contempt proceedings.

The defendants argue that proceedings for contempt of court are not precluded by bankruptcy discharge because such fines, no matter who payable to, are for the purpose of upholding the integrity of the court. See Thruway Messenger Service, Inc. v. Marini (In re Marini), 28 B.R. 262 (Bankr. E.D.N.Y. 1983). However, "[A]ny civil court action that is intended to further the collection of a pre-petition debt, or whose legal or practical result will be to accomplish such collection, is enjoined." See Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1006-07 (Bankr. D. Minn. 1994). "This is so regardless of how the action is styled in terms of substance, and regardless of its posture as to procedure; regardless of the nominal alignment of the initiating and responding parties; and regardless of the specificity or vagueness of the relief requested in the pleadings or papers that commence the proceeding." Id. "Those proceedings in which a private-party complainant seeks or is motivated to collect a pre-petition debt via the contempt adjudication ... unquestionably fall within the scope of the [discharge] injunction." Id.

As in Atkins, there is nothing about the proceedings that occurred before the Ramsey County District Court as a result

of the motion of April 17, 2000, that implicated the authority or integrity of that court. "Under this framework, then, the Defendants cannot have the benefit of a judicially-crafted exception from the ... discharge injunction." Id.

The totality of undisputed facts in this case renders the defendants' protestations unavailing. Luban's alleged debts to Griffis, arising out of the Alabama judgment and injunction and asserted pre-petition violations thereto, were discharged in bankruptcy on March 15, 2000. The defendants had notice of Luban's discharge and were thereafter bound by the discharge injunction of § 524(a)(2). The defendants were and are "restrained and enjoined from taking any action to assert any [pre-petition] claim against Plaintiff." See Bowen v. Residential Fin. Corp. (In re Bowen), 89 B.R. 800, 807 (Bankr. Minn. 1988).

The defendants having had notice of the discharge, the discharge injunction, and its effect. and because the defendants intentionally proceeded to seek enforcement of a debt subject to the Chapter 7 discharge, "it perforce follows that [the defendants] knowingly and willfully proceeded to violate that [discharge] injunction when it commenced its litigation" in state court for an order of contempt against Luban based on pre-petition alleged violations of the Alabama injunction. Id. As a result, the defendants are in contempt of this Court. Id.

Luban is entitled to judgment in her favor, determining that her Chapter 7 discharge discharged the Griffis's claims of pre-petition violations of the Alabama injunction, and finding the defendants in civil contempt of this Court for attempting to enforce those claims by instituting contempt proceedings in Ramsey County District Court. Id.

Damages for Violating § 524(a)(2)

"A bankruptcy court may award damages to the injured party for a willful violation of the discharge injunction pursuant to the court's civil contempt power imbedded in section 105 of the Code." See Payless Cashways, Inc. v. Tippecanoe County (in re Payless Cashways, Inc.), 254 B.R. 746, 751 (Bankr. W.D. Mo. 2000) (citation omitted); see also Bowen, 89 B.R. at 807 n.10 (proceeding in bankruptcy seeking monetary relief to compensate disobedience of the discharge injunction and equitable relief to restrain future infractions is a proceeding for an adjudication of civil contempt, which power is conferred on bankruptcy judges by the all-writs provisions of § 105). "The use of that power is discretionary ... [a]nd, the damages must be based on evidence of actual loss." See Payless Cashways, 254 B.R. at 751.

"[Section] 524(a) is civil contempt and may be redressed by extraction of attorneys fees." See In re Smith, No. 92-36336, slip op. (Bankr. D. Minn. July 23, 1993) (unpublished decision). However, each violation must be considered in its entirety, with due consideration to the underlying facts." Id. (citations omitted). "Violation of the injunction also can result in a claim for general compensatory damages to a debtor injured by the violation." Id. Lastly, violation of the discharge injunction can also give rise to punitive damages, to the extent that the creditor action and behavior reaches the necessary level of outrageousness. Id.

The question of Luban's damages as a result of the defendants' contempt is inherently factual. Moreover, the record before the Court on this issue is undeveloped and therefore inadequate for present determination. "The structure of an appropriate sanction for the [Defendants'] contempt, in the form of damages compensating Plaintiff for the infringement of [her] established rights under the

[discharge] order, may be addressed in further proceedings." See Bowen, 89 B.R. at 807. A trial exclusively on the subject of damages will be scheduled. The trial briefs due pursuant to deadlines to be established by a new trial order shall address only the issue of damages, and, as the Court has previously reiterated, discovery is and remains closed and no requests for reopening discovery will be entertained.

IV. DISPOSITION

For the reasons set forth above, IT IS HEREBY ORDERED:

1. The Plaintiff's motion for summary judgment against the defendants is **GRANTED** as to liability under § 524(a)(2);

1. The Defendants' motion for summary judgment is **DENIED;**

1. This matter will proceed to trial exclusively on the issue of the Plaintiff's damages as a result of the Defendants' violation of § 524(a)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: May 9, 2001

/e/ Dennis D. O'Brien
Hon. Dennis D. O'Brien
United States Bankruptcy Judge

ELECTRONIC NOTICE OF ENTRY AND
FILING ORDER OR JUDGMENT Filed and
Docket Entry made on May 9, 2001
Patrick
G. DeWane, Clerk By DLR Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re MARIANNE LUBAN, a/k/a MARIANNE WELLS,

Debtor.

BKY 99-36147

Chapter 7

MARIANNE LUBAN,

Plaintiff

v.

KATHERINE GRIFFIS, C. PETER ERLINDER, and RALPH J. OVERHOLT,

Defendants.

ADV 00-3163

ORDER

At St. Paul, Minnesota this 17th day of July, 2001.

On May 9, 2001, this Court entered and Order for Judgment and Judgment in favor of the Plaintiff finding that the Defendants violated the discharge injunction provided by 11 U.S.C. § 524(a)(2) and setting the matter on for trial exclusively to determine the Plaintiffs damages as a result of the § 524(a)(2) violation. This matter came before the Court today to be tried accordingly, and on the Defendants' motion to enforce a purported settlement. Ralph J. Overholt appeared *pro se* and on behalf of the Defendants, Katherine

Griffis and C. Peter Erlinder. Steven D. London appeared on behalf of the Plaintiff, Marianne Luban.

The Court has jurisdiction over this matter as a core proceeding under 28 U.S.C. §§ 157(b)(2)(O), and § 1334. Based upon the proceedings and all the relevant files and records contained herein, the evidence admitted at trial, and for the reasons stated by the Court on the record, the Court now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED:

1. The Defendants' motion to enforce settlement is granted in part, to the extent of the $900.00 damage award contemplated by the settlement and the waiver by the Defendants of the $500 fees and costs awarded to the Defendants against the Plaintiff by the Ramsey County District Court of the State of Minnesota;

2. In addition to the settlement provisions enforced in paragraph 1 of this Order, the judgment against the Defendants will also include:

   A) amounts equal to the filing fees paid by the Plaintiff in this adversary proceeding and in defending the state court motion of April 17, 2000, made by the Defendants in violation of § 524(a)(2),

   B) the Plaintiffs reasonable attorney's fees incurred in the trial of this adversary proceeding, and

   C) a permanent injunction forever prohibiting the Defendants individually or in concert from seeking any redress or remedy whatsoever from the Plaintiff on the basis of prepetition conduct that did or would otherwise violate the Jefferson

County Circuit Court of Alabama injunction entered against the Plaintiff in 1998;

3. The Court will not award punitive damages;
4. Plaintiff's counsel has 10 days from the date of this Order to file an affidavit of reasonable attorney's fees; and
5. A final judgment will thereafter be entered against the Defendants in this case consistent with the terms of this Order.

BY THE COURT:

Dated: July 18, 2001

/e/ Dennis D. O'Brien
United States Bankruptcy
Judge

STATE OF MINNESOTA

IN SUPREME COURT

CX-01-1350

Katherine Griffis,

Respondent,

vs.

Marianne Luban,

Petitioner.

ORDER

This appeal concerns respondent's efforts to enforce in Minnesota courts an injunction obtained against petitioner, a Minnesota resident, by default judgment in an Alabama state court. The court of appeals ordered the case remanded to the district court to issue a modified injunction narrowed to reach only statements found to be defamatory by the Alabama court and to ensure that the injunction did not extend to nondefamatory speech. By order dated May 14, 2002, the petition for further review in this case was granted and all proceedings were stayed pending final disposition in a prior appeal involving the enforceability of the Alabama judgment, *Griffis v. Luban*, 633 N.W.2d 548 (Minn. App.) (*Griffis I*), *rev. granted* (Minn. Nov. 13, 2001).

Our opinion in *Griffis I* was filed July 11, 2002, holding that the Alabama judgment is not entitled to full faith and credit in Minnesota courts because due process principles preclude recognizing Alabama's exercise of personal jurisdiction over petitioner in the circumstances of this case. *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002). We therefore vacated the Alabama judgment filed in Ramsey County

District Court on May 5, 1998, under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27 (2000), and the Ramsey County District Court judgment entered on December 21, 2000, based on the Alabama judgment. Having vacated those judgments, there is no legal basis on which the injunction that is the subject of this appeal and the court of appeals' remand could be issued. Accordingly the decision of the court of appeals is vacated and the case remanded to the district court for final disposition of the case consistent with *Griffis I.*

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the May 14, 2002, order of this court staying proceedings be, and the same is, vacated.

IT IS FURTHER ORDERED that the March 5, 2002, decision of the court of appeals be, and the same is, vacated and the matter is remanded to the district court for any proceedings necessary to conclude the case consistent with *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002).

Dated: September 17, 2002

BY THE COURT:

_____

Kathleen A. Blatz
Chief Justice

Gilbert, J., took no part in the consideration or decision of this case.

(3)

Supreme Court, U.S.
FILED
FEB 28 2003
OFFICE OF THE CLERK

No. 02-754

In the Supreme Court of the United States

KATHERINE GRIFFIS,

Petitioner,

v.

MARIANNE LUBAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

REPLY OF PETITIONER

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1. Counsel for Respondent's argument, regarding the ability of sister states to enforce each other's judgments for injunctive relief, confirms the compelling importance of the Petition for Certiorari filed in this matter.

Counsel for Respondent questions the "true motivation" of Petitioner in seeking to enforce the injunction entered against Respondent Luban, in light of Luban's declaration of bankruptcy following the entry of the Alabama money judgement. [Response, p. 18]. In support of this argument, counsel for Respondent makes the extraordinary assertion that the Alabama injunction is unenforceable in a sister state under the Full Faith and Credit Clause and the Uniform Enforcement of Foreign Judgments Act, because it might be modified in its enforcement or because of "substantial First Amendment issues." [Response, pp. 17-18]. This argument ignores the settled precedent of this Court and appears to be intentionally misleading.[1]

A. Injunctive relief to prevent *re-publication* of an author's defamatory, constitutionally unprotected work is subject to enforcement under Full Faith and Credit.

---

[1] Counsel for Respondent also states that the Minnesota Supreme Court "vacated the Alabama judgement as well as the Ramsey County district court judgement upon which it was based." [Response, p. 11] and appears to be under the misapprehension that the Minnesota Supreme Court has the power to vacate a judgement of a sister jurisdiction. Of course, this is not possible in our Federal system. Only the Alabama courts can vacate Alabama judgements, the role of the Minnesota courts is limited to determining whether the Alabama judgement is subject to enforcement in Minnesota. *See*, Thompson v. Thompson, 484 U.S. 174 (1988).

This Court has long held that injunctive relief is appropriate under the First Amendment, and is *not* a prior restraint, when the injunction prevents *re-publication* of unprotected speech:

> "...[earlier cases] may once have stood for the proposition that any injunction against speech activity was a 'prior restraint' on speech...the special vice of a prior restraint is that communication will be suppressed...*before* an adequate determination that it is unprotected by the First Amendment," Pittsburgh Press v. Comm'n on Human Relations, 413 U.S. 376, 390 (1973) (Rehnquist, J). (emphasis added).

In the case before the Court, the Minnesota Court of Appeals specifically found that the procedures employed in entering a default judgement by the Alabama courts provided sufficient due process to protect the interests of a defendant who intentionally failed to appear, after having received notice. Griffis v. Luban, 633 N.W.2d 548 (Minn. App. 2001). Moreover, this Court has made perfectly clear that the First Amendment, which may be relevant to substantive defamation issues, "plays no role" in the jurisdictional analysis. Calder v. Jones, at 790 (1984) (Rehnquist, J.).

Counsel for Respondent's citation of Thompson v. Thompson, 484 U.S. 174 (1988) to support his argument is inapposite, since this Court actually *upheld* the enforcement of non-monetary relief in divorce decrees issued by sister states, with this limitation:

> "... the Full Faith and Credit Clause obliges States only to accord the same force to a judgement as would be accorded by the courts of

> the State in which the judgement was entered...[B]ecause courts entering custody orders generally retain the power to modify them, courts in other states were no less entitled to change the terms of custody according to their own views of the child's best interest. Thompson at 180.

Thompson does not stand for the proposition for which counsel for Respondent cites it, and the reading suggested by counsel would prevent the operation of our Federal system.

B. Money damages, as a disincentive to worldwide re-publication of defamatory works, are irrelevant with respect to judgement-proof Internet authors, thus increasing the importance of injunctive relief in *all* cases of Internet defamation.

Under the common law, actions for defamation would lie not only against the author, but against any publisher or distributor involved in broad dissemination of the allegedly defamatory work, as is illustrated by the actions against multiple defendants in Calder v. Jones, 465 U.S. 783 (1984). Under traditional defamation rationale, money damages not only made an injured party "whole', but created a disincentive to future publication and distribution of the same defamatory work by the publisher or distributor. In the pre-Internet world, the *author* of the alleged defamation was often *not* the most important defendant to be joined in actions like Calder, or New York Times v. Sullivan, 376 U.S. 254 (1964).

Now that the Internet has made it possible for an author who is judgement proof, such as Ms. Luban, to repeatedly re-publish her attacks to worldwide audience, with merely the

touch of a computer key, money damages as a remedy no longer have any meaningful impact as a deterrent.[2] Because enforcement of injunctive relief is so important to actions arising from defamation on the Internet, the argument of counsel for Respondent adds yet another reason for this Court to address the interpretation of Calder in an Internet context, which is at the heart of this Petition.

2. Counsel for Respondent's reference to precedent of this Court, which does not apply to intentional torts, reveals the level of misunderstanding that exists with respect to this Court's holding in Calder v. Jones, and emphasizes the importance of this Court granting the Petition for Certiorari.

In so far as counsel for Respondent asserts that mere "foreseeability of harm" is insufficient to establish personal

---

[2] Counsel for Respondent makes much of the fact that Petitioner Griffis has not filed a *new* defamation action against Ms. Luban in Minnesota, Alabama, or elsewhere. In light of the fact that his client has recently declared bankruptcy [Response, p. 7], his suggestion that this Court should *reject* this Petition because, "Griffis has not brought any such suit against Luban during the 20 months since the Ramsey County District Court vacated the injunction." [Response, p. 18] merely illustrates the futility of money damages when world-wide Internet distribution is at issue in a defamation action.

Counsel for Respondent fails to mention that Petitioner Griffis *has* sought injunctive relief for statements by his client made *after* the entry of the Alabama injunction, which occurred both before and after the filing of the bankruptcy petition. The Bankruptcy Court found that seeking enforcement of injunctive relief for statements made *prior* to the filing were unenforceable "judgments", rather than equitable relief. While this is a highly questionable conclusion on its face, injunctive relief for statements made *after* the filing of the Bankruptcy are not implicated in that ruling. [Resp. App. pp. 25 *et seq.*]. Since *ongoing* enforcement of the Alabama injunction is Plaintiff's primary interest, appeal of the Bankruptcy Court finding was not in Plaintiff's interest.

jurisdiction, [Response, p. 17, citing Burger King v. Rudzewicz, 471 U.S. 462, 474 (1985)], Petitioner and Respondent have no dispute. However, it is well established that personal jurisdiction hinges on the "... relationship among the defendant, the forum, and the litigation," Shaffer v. Heitner, 433 U.S. 186, 204 (1977), and the contract claim in Rudzewicz provides no direction for determining personal jurisdiction in a cause of action based on an intentional tort:

> "Petitioner's analogy does not wash. Whatever the status of their hypothetical welder, petitioners are not charged with mere untargeted negligence, Rather, their intentional, and allegedly tortious, actions were *expressly aimed* at California...they knew... the brunt of the injury would be felt by respondent in the State where she lives and works and in which the National Enquirer has its largest circulation." Calder at 790. [emphasis supplied].

The tortious act at issue in a defamation claim is the intentional creation of a defamatory written work, not the distribution of that work,[3] or the forum in which a contract can be litigated.[4]

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[3] It is well settled that, with respect to a publisher or distributor, even a relatively minor level of distribution is sufficient to establish personal jurisdiction. *See*, Keaton v. Hustler Magazine, Inc., 465 U.S. 770 (1984). *See also*, Gordy v. Daily News, L.P., 95 F.3d 829 (1996) in which jurisdiction over a New York newspaper was established in California although only 13 daily editions and 18 Sunday editions were sent to California because the content of a column "was of a nature that would clearly have a severe impact on [the plaintiff] as an individual. It is reasonable to expect the bulk of the harm from defamation of an individual to be felt in his domicile." Gordy at 833.

[4] Counsel for Respondent's reference to the citation of Griffis v.

Respondent's reading of Calder, would hold Internet authors to answer *only* in their home forum, irrespective of how pointedly the author, or the author's words, *intentionally* caused harm in the Petitioner's home forum, "where the brunt of the injury [to personal or professional reputation] would be felt." Calder at 790.

Petitioner's reading of Calder would hold Internet authors liable to answer either the defendant's home jurisdiction, *or* the home jurisdiction of the plaintiff [where the plaintiff "lives and works" and where the "brunt of the harm" to plaintiff's reputation will be felt]. However, personal jurisdiction should attach outside of the defendant's home forum *only* when a defendant *admits* knowledge of the forum where a plaintiff lives and works, or, in the face of a denial, when the content of a defendant's intentionally created written work reveals such knowledge.[5]

Luban in Pavlovich v. Superior Court of Santa Clara County, 58 P.3d 2 (Cal. 2002), [Response, p.16] reinforces the importance of this Court accepting this Petition. Pavlovich was a trademark action that did not involve allegedly defamatory statements, at all.

[5] Counsel for Respondent's suggests that Petitioner's reading of Calder would: "encourage...frivolous defamation actions in their home states (or countries) against their critics who live in inconveniently distant locations." [Response, p.13]. This is a mis-statement, since only defendants who actually know, or whose works reveal they should have known, the plaintiff's home forum [where the "brunt' of harm to a plaintiff's reputation would be felt] could be held to answer in the forum where a plaintiff "lives and works." *See also,* Gordy v. Daily News, L.P., 95 F.3d 829 (1996)

In the event of a vexatious choice by a plaintiff, a motion to dismiss would be sufficient for the case to be refiled in the defendant's home forum.

However, the reading of Calder suggested by counsel for Respondent, however, would insulate an author, who intentionally attacks another's reputation, from suit in any location, other than the author's home forum, no matter how directly the content of the work referred to the forum in which the "brunt" of harm to plaintiff's reputation would be felt. [*See,*

3. Since the actions of third parties can *never* be the basis for personal jurisdiction, counsel for Respondent shifts the argument to the author's *knowledge* of potential distribution by third parties, thus rejecting the reasoning upon which Griffis v. Luban rests, and further demonstrating the importance of granting the Petition for Certiorari, to eliminate continuing confusion regarding the meaning of Calder v. Jones .

The Petition for Certiorari describes how the Minnesota court's reasoning, requiring a plaintiff to allege and prove "distribution in the forum" by third parties both violates Due Process and would require a reversal of the outcome if Calder, itself. [Petitioner, pp. 20-23]. In response, counsel for Respondent concedes, as he must, that in Calder it must have been defendant's *knowledge* that "California was the focal point of both the story and the harm suffered," which was the basis for personal jurisdiction [Response, p. 12] , NOT a showing of physical distribution by third parties, as required by the Minnesota Supreme Court. [*See*, Petition, pp. 17-24]. Thus, counsel for Respondent shifts the argument by asserting that a defendant's knowledge of the *extent of his employer's distribution network in California*, [Response, p.12], rather than defendant's knowledge that California was the *"focal point of the*

Petition, pp. 15-17].

This reading would permit an intentional tortfeasor to avoid having to defend in the forum in which they intentional chose to cause harm. This would turn the due process shield, which is necessary for innocent defendants, into a shield for intentional wrong doers to attack the reputations of others and impose their own choice of the forum, as well.

story and the harm suffered," which led this Court to find personal jurisdiction in Calder.

Of course, the Due Process Clause prevents consideration of the acts of third parties, in determining personal jurisdiction, *See*, Rush v. Savchuck, 444 U.S. 320, 322, cited at Calder, 465 U.S. at 790. Counsel for Respondent argues that personal jurisdiction in Calder must rest on the defendant author's ability to predict *future conduct* of third parties, based on their past conduct.

When the author completed the offending work in Calder, he might have had some general knowledge of past distribution practices of the *Enquirer*. However, that author could not have known whether that particular story would be accepted for publication, much less whether it would be distributed, or where it would be distributed, by the employer.

Imputed "knowledge" of possible distribution in a forum by third parties that may, *or may not*, ever occur can hardly be a basis to deny, or to uphold, personal jurisdiction over a defendant. Rather, in Calder personal jurisdiction was found to exist because the *content* of the written work revealed, over his objection, that the author: [a] "targeted" California by attacking Plaintiff's reputation, knowing the "brunt of the injury" would occur where "she lives and works;" [b] "aimed" at California by specifically mentioning Plaintiff's supposedly irresponsible activities in her home state; and [c] made California the "focus of the activities...out of which the suit arises." *See also*, Gordy v. Daily News, L.P. 95 F.3d 829 (9th Cir. 1996).

The apparent misunderstanding of Calder revealed in the holding of the Minnesota Supreme Court considering the "acts of third parties", is compounded in the Response, which advocates a rule based on "knowledge of possible future acts of third parties." The Response makes much clearer than

Petitioner's own arguments ever could, that this Court must soon clarify the application of the Calder v. Jones "effects" test to Internet authors when defamation is at issue.

CONCLUSION

Counsel for Respondent asserts that it the defendant author's knowledge of his employer's *past distribution practices* is the factor upon which personal jurisdiction rests in Calder, [Response, p. 12]. This is actually a rejection of the basis for the holding of the Minnesota Supreme Court from which this Petition is brought, [*see*, Petition, pp. 17-23] and is a contradiction which makes clear that this Court must soon clarify the application of Calder to Internet authors.

Because Internet publication has put a worldwide audience within the reach of any author with access to a computer terminal, this question becomes even more compelling. The increased significance of authors as the sole agents of the worldwide distribution of their work, together with the apparent widespread confusion regarding the meaning of this Court's holding in Calder v. Jones, makes clear that this question cannot wait long for resolution.

This Petition presents the Court with a set of facts that focus clearly on the application of Calder to an internet author and presents excellent opportunity to clarify issues, which are important to all users of the Internet, to the lower courts in the United States[6], and to courts worldwide.[7]

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[6] *See*, Young v. New Haven Advocate, 315 F.3d. 256 (4th Cir. 2002), a case involving personal jurisdiction over a publisher, which relied on Griffis v. Luban, 646 N.W.2d 527 (Minn. 2002), even though personal jurisdiction over the publisher was not at issue in Calder, nor Griffis.

[7] *See*, Dow Jones & Company, Inc v. Gutnick, [2002] HCA 56 (10 Dec. 2002). The High Court of Australia adopts a rule, much like that advanced by Petitioner, that a plaintiff harmed by Internet postings, whose

Respectfully submitted.

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content intentionally "focused" on plaintiff's financial standing in Australia, could be sued where defendant knew the brunt of the harm to plaintiff's reputation and business would be felt.